

STATE OF MICHIGAN
IN THE SUPREME COURT

JUL 26 2002

FILED

IN RE CERTIFIED QUESTION
FROM THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT

KENNETH HENES SPECIAL PROJECTS
PROCUREMENT, MARKETING AND
CONSULTING CORPORATION,

Plaintiff-Appellee

Docket No. 120110

vs.

CONTINENTAL BIOMASS INDUSTRIES, INC.

Defendant-Appellant.

APPELLEE'S BRIEF
CONCERNING CERTIFIED QUESTION

ORAL ARGUMENT REQUESTED

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lack of temperance or of alcoholic liquor
ratus 1 not temper-
it; excessive: going to
temperate wind/ 2
erately adv.

tendre < L *intendere*,
to stretch: see THIN
i (something) to be or
i for the party/ 3 to
rn (the mind, eyes,
legally —vi. to have a

ing to be done, said, etc.
rd. does not connote so
ans well; design sug-
lar result /their delay
ies a clear declaration,
to speak for an hour/;
etermination to effect

: see INTENDANT 1
ious administrative

ion or duties of an in-
ct supervised by an

ntendente, both < L
ector, manager of a
d to certain foreign
districts in Spanish

prospective; future
om one has agreed

ment < OFr: see
gn 2 the true and

+ L *tener*, TENDER
ation n.

, pp. of *intendere*:
agree; very strong;
ht/ 2 strained to
tense thought/ 3
great seriousness,
action, emotion.

hat intensifies 2
y of several solu-
ative

intense or more
i film, etc.) more
—vi. to become
n.

force, vehemence,
aggravate implies
something that is
ily aggravates the
vid, etc. so as to
d to heighten the
as to make more
r beauty/ —ANT.

pp. of *intendere*:
nification 3 the
ity 4 Logic the
tension: conno-

1 the quality
ything b) great
ty 2 degree or
URATION (sense
t, light, sound,
c.

intensus: see
e in degree or
profound, and
ire of an espe-
diately follow-
g a system of
acre by using
5 Gram. giving
me man" is an
? an intensive
ss n.

ing, requiring
amounts of (a

intensus, pp.
rnest; intense
ly directed or
olved (intent
ML *intensus*,
TEND 1 an
specif., a) a
one's mental

attitude, including purpose, will, determination, etc., at the time of
doing an act —SYN. INTENTION —to all intents and purposes in
almost every respect; practically; virtually —in-tent'ly adv. —in-
tent'ness n.

in-ten-tion (in ten'shən) n. [ME *entencion* < OFr *entencion* < L
intentio < pp. of *intendere*] 1 the act or fact of intending; determi-
nation to do a specified thing or act in a specified manner 2 a)
anything intended or planned; aim, end, or purpose b) [pl.] purpose
in regard to marriage 3 [Rare] meaning or import 4 *Philos.* a con-
cept formed when the mind is directed toward an object 5 *Surgery*
the manner or process by which a wound heals: the three degrees
(first, second, and third intention) are distinguished by the relative
amounts and types of granulation that occur

SYN.—intention is the general word implying a having something in mind
as a plan or design, or referring to the plan had in mind; intent, a somewhat
formal term now largely in legal usage, connotes more deliberation /assault
with intent to kill/; purpose connotes greater resolution or determination
in the plan /I have a purpose in writing you/; aim refers to a specific
intention and connotes a directing of all efforts toward this /his aim is to
become a doctor/; goal suggests laborious effort in striving to attain some-
thing /the presidency was the goal of his ambition/; end emphasizes the
final result one hopes to achieve as distinct from the process of achieving it
/does a desirable end ever justify the use of immoral means?/; object is
used of an end that is the direct result of a need or desire /the object of the
discussion was to arouse controversy/; objective refers to a specific end
that is capable of being reached /her immediate objective is to pass the course/

in-ten-tional (in ten'shə nəl) adj. [ML *intentionalis*] 1 having to do
with intention or purpose 2 done purposely; intended —SYN. VOL-
UNTARY —in-ten-tion-ally adv.

in-ten-tioned (in ten'shənd) adj. having (specified) intentions: often
in hyphenated compounds (well-intentioned)

in-ter (in tər) vt. -tered', -ter'ring [ME *enteren* < OFr *enterrer* <
VL **interrare*, to put in the earth < L *in*, in + *terra*, earth: see
THRUST] to put (a dead body) into a grave or tomb; bury

inter- (in-tər) [L < *inter*, between, among < IE **enter*, **nter*
(compar. of base **en*, in) > OFr *entre*, Sans *antar*, within, OE
under, Ger *unter*, among, Gr *enteron*, intestine; prefix 1 between or
among; the second element of the compound is singular in form
/interstate/ 2 with or on each other (or one another), together,
mutual, reciprocal, mutually, reciprocally /interact/

inter-act (in-tər akt') vt. to act on one another; act reciprocally
inter-act-ant (-ak'tənt) n. any of the elements involved in an interac-
tion; specif., any of the substances involved in a chemical reaction
inter-ac-tion (-ak'shən) n. action on each other; reciprocal action or
effect —inter-ac-tion-ally adv.

inter-active (-ak'tiv) adj. 1 acting on one another; reciprocally
active 2 designating or of programming electronic equipment, as for
TV, videocass., etc., which allows viewers to participate, as by mak-
ing a response, influencing the pace of the action, etc. 3 of or involv-
ing a mode of operation in which there is a continual exchange of
information between the computer and the user at a video screen

inter-aig-en-cy (in-tər ā-jən sē) adj. of or having to do with two or
more governmental agencies

in-ter alia (in-tər ā'le ə) [L] among other things

in-ter alios (ā'le ōs') [L] among other persons

inter-American (in-tər ə mer'ī kən) adj. between or among nations
of the Americas

inter-brain (in-tər brān') n. DIENCEPHALON

inter-breed (in-tər brəd', in-tər brəd') vt., vi. -bred', -breed'ing
HYBRIDIZE

inter-ca-lary (in tər'kə lə-rē) adj. [L *intercalarius*, *intercalaris* <
intercalare: see fol.] 1 added to the calendar: said of a day, month,
etc. inserted in a calendar year to make it correspond to the solar
year 2 having such a day, month, etc. added: said of a year 3 inter-
polated or inserted

inter-ca-late (in tər'kə lāt') vt. -lated', -lat'ing [L *intercalatus*, pp.
of *intercalare*, to insert < *inter*, between + *calare*, to call, proclaim:
for IE base see CLAMOR] 1 to insert (a day, month, etc.) in the
calendar 2 to interpolate or insert —inter-ca-la-tion n.

inter-cede (in-tər sēd') vi. -ced'ed, -ced'ing [L *intercedere* <
inter, between + *cedere*, to go: see CEDE] 1 to plead or make a
request in behalf of another or others /to intercede with the authorities
for the prisoner/ 2 to intervene for the purpose of producing
agreement; mediate

inter-cel-lu-lar (in-tər sel'yōō lər) adj. located between or among cells

inter-cept (for v. in-tər sept'; for n. in-tər sept') vt. [L *interceptus*,
pp. of *intercipere*, to take between, interrupt < *inter*, between +
capere, to take: see HAVE] 1 to seize or stop on the way, before
arrival at the intended place; stop or interrupt the course of; cut off
/to intercept a forward pass/ 2 [Now Rare] a) to stop, hinder, or
prevent b) to cut off communication with, sight of, etc. 3 *Math.* to
cut off, mark off, or bound between two points, lines, or planes —n.
1 *Math.* the part of a line, plane, etc. intercepted 2 *Mil.* the act of
intercepting an enemy force, esp. enemy aircraft —inter-cep-tion n.
—inter-cep-tive adj.

inter-cep-tor (in-tər sept'ər) n. a person or thing that intercepts;
esp., a fast-climbing fighter jet or a surface-to-air missile Also inter-
cep'ter

inter-ces-sion (in-tər sesh'ən) n. [L *intercessio* < *intercessus*, pp. of
intercedere] the act of interceding; mediation, pleading, or prayer in
behalf of another or others —inter-ces-sional adj.

inter-ces-sor (in-tər ses'ər, in-tər ses'ər) n. [ME *intercessour* < L
intercessor] a person who intercedes —inter-ces'sory adj.

inter-change (for v. in-tər chānj'; for n. in-tər chānj') vt. -changed',
-chang'ing [ME *entrenchen* < OFr *entrenchier*: see INTER-
CHANGE] 1 to give and take mutually; exchange /to interchange
ideas/ 2 to put (each of two things) in the other's place 3 to alter-

nate: cause to follow in succession /to interchange work with play/
—vi. to change places with each other —n. 1 the act or an instance
of interchanging 2 a junction which allows movement of traffic
between highways on different levels, as a cloverleaf

inter-change-able (in-tər chān'jə bəl) adj. [OFr *entrenchable*] that
can be interchanged; esp., that can be put or used in place of
each other —inter-change-ability n. —inter-change-ably adv.

inter-city (in-tər si'tē) adj. between cities /intercity trains/

inter-clavi-cle (in-tər klav'ī kal) n. a bone lying between the tips of
the clavicles and on the sternum in certain vertebrates —inter-cla-
vic'u-lar (-klā vik'yōō lər) adj.

inter-col-legiate (in-tər kə lē'jit) adj. between or among colleges and
universities

inter-co-lum-nia-tion (-kə lum'nə ā'shən) n. 1 the space between
two columns, measured from their axes 2 the system of spacing a
series of columns

inter-com (in-tər kām') n. a radio or television intercommunication
system, as between compartments of an airplane or ship, rooms of a
building, etc.

inter-com-mu-ni-cate (in-tər kə myōō'nī kāt') vt., vi. -cat'ed, -cat-
ing to communicate with or to each other or one another —inter-
com-mu-ni-ca-tion n.

inter-com-mun-ion (-kə myōōn'yən) n. mutual communion, as
among religious groups

inter-con-nect (in-tər kə nekt') vt., vi. to connect or be connected
with one another —inter-con-nect-ion n.

inter-con-ti-nen-tal (in-tər kən'tə nent'l, -kənt'n ent'l) adj. 1
between or among continents 2 able to travel from one continent to
another, as a plane, rocket-launched missile, etc.

inter-cos-tal (in-tər kōs'tal, -kōs'-) adj. between the ribs —n. an
intercostal muscle, etc. —inter-cos'tally adv.

inter-course (in-tər kōrs') n. [ME *entercours* < OFr *entrecours* < L
intercursus: see INTER- & COURSE] 1 communication or dealings
between or among people, countries, etc.; interchange of products,
services, ideas, feelings, etc. 2 the sexual joining of two individuals;
coitus; copulation: in full, sexual intercourse

inter-crop (for v. in-tər krāp', in-tər krāp') vt., vi. -crop'ped', -crop'ping to grow a crop with (another crop) in the
same field, as in alternate rows —n. any such crop

inter-cross (for v. in-tər krōs', in-tər krōs') vt., vi. -cross'ed', -cross'ing to cross (one another) 2 HYBRIDIZE —n. HYBRID (sense
1)

inter-cul-tural (in-tər kul'chər əl) adj. between or among people of
different cultures

inter-current (-kər'ənt) adj. [L *intercurrents*, pp. of *intercurrere*:
see INTER- & CURRENT] 1 running between; intervening 2 occurring
during another disease and modifying it —inter-cur-rently adv.

inter-cut (in-tər kut') vt., vi. -cut, -cut'ting *Film*, TV to interrupt (a
scene, sequence, etc.) by inserting (a shot, sequence, etc.), sometimes
repeatedly

inter-denomi-na-tional (in-tər də nām'ə nā'shən əl, -di-) adj.
between, among, shared by, or involving different religious denomina-
tions

inter-den-tal (in-tər dent'l) adj. 1 situated between the teeth 2
Phonet. articulated with the tip of the tongue between the upper and
lower teeth, as (th) and (dh) —n. an interdental consonant

inter-depart-men-tal (-dēp'art ment'l) adj. between or among
departments —inter-depart'men-tally adv.

inter-depend-ence (in-tər də pen'dəns, -di-) n. dependence on each
other or one another; mutual dependence Also inter-depend'ency
—inter-depend'ent adj. —inter-depend'ently adv.

inter-dict (for v. in-tər dikt'; for n. in-tər dikt') vt. [altered (infl. by L
interdictus) < ME *entrediten* < *entredit*, n.: see n. below] 1 to
prohibit (an action) or prohibit the use of (a thing); forbid with
authority 2 to restrain from doing or using something 3 to impede
or hinder (the enemy) or isolate (an area, route, etc.) by firepower or
bombing 4 *R.C.Ch.* to exclude (a person, parish, etc.) from certain
acts, sacraments, or privileges —n. [altered (infl. by L) < ME
entredit < OFr < L *interdictum* < pp. of *interdicere*, to forbid,
prohibit, lit., to speak between < *inter* (see INTER-) + *dicere*, to
speak (see DICTION)] 1 an official prohibition or restraint 2 *R.C.Ch.*
an interdicting of a person, parish, etc. —SYN. FORBID —inter-dic'-
tion n. —inter-dic'tor n. —inter-dic'tory or inter-dic'tive adj.

inter-digi-tate (in-tər dij'ī tāt') vt. -tat'ed, -tat'ing to interlock like
the fingers of folded hands

inter-dis-ci-pli-nary (-dis'ə pli ner'ē) adj. involving, or joining, two
or more disciplines, or branches of learning /an interdisciplinary
approach to cultural history/

inter-est (in'trist, -trast, -trist; also, esp. for v., -tar est', -trest') n.
[ME *interesse* < ML *usury*, compensation (in L, to be between, be
different, interest < *inter*, between + *esse*, to be: see IS); altered,
infl. by OFr *interest* < L, it interests, concerns, 3d pers. sing., pres.
indic. of *interesse*] 1 a right or claim to something 2 a) a share or
participation in something b) a business, etc. in which one partici-
pates or has a share 3 [often pl.] advantage; welfare; benefit 4
[usually pl.] a group of people having a common concern or domi-
nant power in some industry, occupation, cause, etc. (the steel inter-
ests) 5 personal influence 6 a) a feeling of interest, concern, or
curiosity about something /an interest in politics/ b) the power of
causing this feeling /books of interest to children/ c) something

at, ate, cār, ten, ēve; is, ice; gō, hōrn, look, tōōl; oil, out; up,
fur; a for unstressed vowels, as a in ago, u in focus; ' as in Latin
(lat'n); chin; she; zh as in azure (azh'ar); thin, the; η as in ring (rin)
In etymologies: * = unattested; < = derived from; > = from which
★ = Americanism
See inside front and back covers

ADDENDUM 3 - *Webster's II New Riverside University Dictionary* (1984)
Definition of "Intentional"

WEBSTER'S II
New Riverside
University
Dictionary

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Manufactured in the United States of America

oe. [Ital. < *intagliare*, to en-
cut < VLat. **talliare*. —see
i beneath the surface of hard
carving a design in this man-
n. Printing done with a plate
incised so as to produce a

hich a fluid is admitted into
taking in. b. Something, esp.

apable of being apprehended
ing defined <an intangible
ing intangible, esp. an asset
i or senses. —*in-tan-gi-bil'-*
bly adv.
< *tarsia*, inlaid mosaic work
od. 2. The art or practice of

complete.] 1. A member of
2, 3, . . . , negative whole
2. A complete entity or unit
e of being integrated. —*in-*

Lat. *integralis*, making up a
essential for completeness.
3. (in-ti-gral). Math. a. Ex-
integers. b. Expressed as or
unit: WHOLE. 2. (in-ti-gral).
inite integral. —*in-te-gral'-*

cal study of integration, the
ions.

ring with unity having no
nonzero elements *a*, *b* such
nity.
tetrandus, gerund. of inte-
on to be integrated.

st-ing, -grates. [Lat. *inte-*
er, complete.] —*vt.* 1. To
together: UNIFY. 2. To join
thout restriction to people
t. 4. Math. a. To calculate
on. 5. To bring about the
o become integrated or un-

of substrate material on
nts and their intercon-
ed circuitry *n.*

integrated circuit

act or process of integrat-
c. Desegregation. 2. The
ocial traits and tendencies
t. —*in-te-gra-tion-i-st n.*
it integrals. 2. An instru-
: integrals.

e < Ofr. < Lat. *integritas*.
Firm adherence to a code
ite of being unimpaired:
f being undivided: COM-

o-rén'shəl, in-tég-rō-) *adj.*
ng both mathematical dif-

t. *integumentum* < *inte-*
an outer covering or coat,
or the membrane enclos-
-to-ré, -mén-tré) *adj.*

it. *intellectus*, perception
INTELLIGENT.] 1. a. The

é be hw which í pit
or oi noise öö took

capacity for understanding and knowledge. b. The ability to think
abstractly or profoundly. 2. A person of great intellectual ability.

in-tel-lec-tion (in-ték-shən) *n.* [ME *intelleccioun*, understand-
ing < Ofr. < Lat. *intellectus* < *intellectus*, intellect.] 1. The act or
process of exercising the intellect. 2. A thought or idea.

in-tel-lec-tive (in-ték-tiv) *adj.* Of, relating to, or generated by
the intellect. —*in-tel-lec-tive-ly adv.*

in-tel-lec-tron-ics (in-ték-trón'iks) *n.* [Blend of INTELLECT and
ELECTRONICS.] (sing. in number). The use of electronic devices to
extend human intellect.

in-tel-lec-tu-al (in-ték-chō-əl) *adj.* 1. a. Of or relating to the
intellect. b. Rational rather than emotional. 2. Appealing to or engag-
ing the intellect. 3. a. Intelligent. b. Given to exercise of the intel-
lect. —*n.* An intellectual person. —*in-tel-lec-tu-al-ity* (-āl'itē) *n.*
—*in-tel-lec-tu-al-ly adv.*

in-tel-lec-tu-al-ism (in-ték-chō-əl-izm) *n.* 1. Exercise or ap-
plication of the intellect. 2. Devotion to development or exercise of
the intellect. —*in-tel-lec-tu-al-ist n.* —*in-tel-lec-tu-al-ist-ic adj.*
in-tel-lec-tu-al-ize (in-ték-chō-əl-īz) *vt.* -ized, -izing, -izes.
To give a rational structure or meaning for. —*in-tel-lec-tu-al-iza-
tion n.* —*in-tel-lec-tu-al-izer n.*

in-tel-li-gence (in-tél'jəns) *n.* 1. a. The capacity to acquire and
apply knowledge. b. The faculty of thought and reason. c. Superior
mental powers. 2. a. An intelligent, incorporeal being, esp. an angel.
b. Intelligence. Christian Science. The primal, eternal quality of
God. 3. News: information. 4. a. Secret information, esp. about an
enemy. b. An agency employed in gathering such information.

intelligence quotient *n.* The ratio of tested mental age to
chronological age, usu. expressed as a quotient multiplied by 100.

in-tel-li-gence-er (in-tél'jəns-er, -jén'-) *n.* 1. One who conveys
news: reporter. 2. A secret agent: SPY.

intelligence test *n.* A standardized test used to determine the
relative mental ability of an individual.

in-tel-li-gent (in-tél'jənt) *adj.* [Lat. *intelligens*, intelligent,
pr.part. of *intelligere*, to perceive: *inter*, between + *legere*, to
choose.] 1. Having intelligence. 2. Having a high degree of intelli-
gence: mentally acute. 3. Displaying sound judgment. 4. Guided or
motivated by the intellect: RATIONAL. 5. Capable of performing cer-
tain computer functions <an intelligent terminal> —*in-tel-li-
gent-ial* (in-tél'jənt'shəl) *adj.* —*in-tel-li-gent-ly adv.*

in-tel-li-gent-si-a (in-tél'jənt'sē-ə, -jén'-) *n.* [R. *intelligentsiya*
< Lat. *intelligentia*, intelligence < *intelligens*, intelligent.] The intel-
lectual elite of a society.

in-tel-li-gi-ble (in-tél'jə-bəl) *adj.* [ME < Lat. *intelligibilis* < *intel-*
legere, to perceive. —see INTELLIGENT.] 1. Capable of being under-
stood <intelligible radio transmissions>. 2. Capable of being
apprehended by the mind alone. —*in-tel-li-gi-bil'-ity*, *in-tel-li-gi-
bleness n.* —*in-tel-li-gi-bly adv.*

in-tem-per-ance (in-tém'pə-rəns, -prəns) *n.* Lack of moderation,
esp. in the excessive consumption of alcoholic beverages.

in-tem-per-ate (in-tém'pə-r-it, -tém'pə-rīt) *adj.* Not temperate: EX-
CESSIVE. —*in-tem-per-ate-ly adv.* —*in-tem-per-ate-ness n.*

in-tend (in-ténd) *v.* -tended, -tending, -tends. [ME *entenden*
< Ofr. *entendre* < Lat. *intendere*: *in-*, into + *tendere*, to stretch.]
—*vt.* 1. To have in mind: PLAN. 2. a. To design for a particular
purpose. b. To have in mind for a particular use. 3. To signify: mean.
—*vi.* To have a design or purpose in mind.

in-tend-ance (in-ténd'əns) *n.* 1. The function of an intendant:
MANAGEMENT. 2. An intendency.

in-tend-ant (in-ténd'ənt) *n.*, pl. -cies. 1. The function or po-
sition of an intendant. 2. Intendants as a group. 3. The district super-
vised by an intendant, as in Latin America.

in-tend-ant (in-ténd'ənt) *n.* [Fr. < Ofr., administrator < Lat. *in-*
tendens, pr.part. of *intendere*, to intend.] 1. An administrative offi-
cial serving a French, Spanish, or Portuguese monarch. 2. A district
administrator in some Latin American countries.

in-tend-ed (in-ténd'id) *adj.* 1. Intentional: deliberate. 2. Proposed
for the future: PROSPECTIVE. —*n.* Informal. An engaged person.

in-tend-ment (in-ténd'mənt) *n.* The true meaning or intention of
something, esp. a law.

in-ten-er-ate (in-tén'ə-rāt) *vt.* -ated, -ating, -ates. [IN- + Lat.
tener, tender + -ATE.] To tender: soften. —*in-ten-er-ation n.*

in-ten-se (in-téns) *adj.* [ME < Ofr. < Lat. *intensius*, stretched,
p.part. of *intendere*, to intend.] 1. Having or exhibiting a distinctive
feature to an extreme degree <the intense heat of the desert>. 2. Ex-
treme in degree. 3. Involving or displaying strain or extreme effort.
4. a. Deeply felt: PROFOUND. b. Tending to feel deeply. —*in-ten-se-
ly adv.* —*in-ten-se-ness n.*

* *SYMS*: INTENSE, DESPERATE, FIERCE, FURIOUS, TERRIBLE, VEHE-
MENT, VIOLENT *adj.* core meaning: extreme in degree, strength, or
effect <an intense storm>

in-ten-si-fi-er (in-tén'sə-fī-er) *n.* 1. One that intensifies. 2. An in-
tensive.

in-ten-si-fy (in-tén'sə-fī) *v.* -fied, -fying, -fies. —*vt.* 1. To make

intense or more intense. 2. To increase the contrast of (a photo-
graphic image). —*vi.* To become intense or more intense. —*in-ten-
sifi-ca-tion n.*

in-ten-sion (in-tén'shən) *n.* [Lat. *intensio*, an intensifying < *inten-*
sus, stretched. —see INTENSE.] 1. Logic. The properies connoted by
a term. 2. Intensity.

in-ten-si-ty (in-tén'si-tē) *n.*, pl. -ties. 1. Exceptionally great con-
centration, power, or force. 2. Physics. a. The measure of effective-
ness of a force field given by the force per unit test element. b. The
energy transferred by a wave per unit time across a unit area perpen-
dicular to the direction of propagation.

in-ten-sive (in-tén'siv) *adj.* 1. Of, relating to, or marked by inten-
sity. 2. Tending to intensify or emphasize. 3. Highly concentrated.
4. Constituting or relating to a method esp. of land cultivation whose
purpose is to increase the productivity of a given area by means of an
increase in the capital and labor. 5. Physics. Having the same value
for any subdivision of a thermodynamic system. *usage*: *Intensive*,
which is often used interchangeably with *intense*, also has the spe-
cial meaning of "concentrated," so that one may speak of *intense*
heat but *intensive* study. —*n.* A linguistic element, as the adverbs
extremely or *awfully*, that add force or emphasis.

intensive care *n.* 1. Special medical equipment and services pro-
vided for seriously ill patients. 2. A hospital unit specializing in in-
tensive care.

in-ten-t (in-tén't) *n.* [ME *entente* < Ofr. < Med. Lat. *intensus* < Lat.,
attentive to, p.part. of *intendere*, to intend.] 1. That which is in-
tended: PURPOSE. 2. The state of mind operative at the time of an
action. 3. a. Meaning: significance. b. Connotation. —*adj.* 1. Firmly
fixed: CONCENTRATED. 2. Having the attention applied: ENGROSSED.
3. Having the mind fixed on some purpose <intent on leaving>
in-ten-tion (in-tén'shən) *n.* [ME *entencioun* < Ofr. < Lat. *intento*,
attention < *intendere*, to intend.] 1. A plan of action: DESIGN.
2. a. An aim that guides action: OBJECT. b. Intentions. Purpose in
regard to marriage. 3. The import, significance, or thrust of some-
thing. 4. Med. The manner or course of healing of a surgical wound.
5. A concept regarded as the product of attention directed to an
object of knowledge.

* *SYMS*: INTENTION, AIM, DESIGN, END, GOAL, INTENT, MEAN-
ING, PLAN, POINT, PURPOSE, TARGET, VIEW *n.* core meaning: what one
intends to do or achieve <was never my intention to get involved in
their scheme>

in-ten-tion-al (in-tén'shə-nəl) *adj.* 1. Deliberately done <an in-
tentional oversight>. 2. Relating to logical intention or connotation.
—*in-ten-tion-al-ity* (-nāl'itē) *n.* —*in-ten-tion-al-ly adv.*

in-ter (in-tūr) *vt.* -tered, -terrering, -ters. [ME *enteren* < Ofr.
enterrer < Med. Lat. *interrare*: Lat. *in-*, in + Lat. *terra*, earth.] To
place in a grave or tomb.

in-ter *pref.* [ME < Ofr. < Lat. < *inter*, between, among.] 1. Between:
among <international>. 2. In the midst of: WITHIN <interropi-
cal>. 3. Mutual: mutually <interrelate>. 4. Reciprocal: reciprocally
<intermingle>

in-ter-a-bang (in-tēr'ə-bāng) *n.* var. of INTERBOANG.

in-ter-act (in-tēr'əkt) *vi.* -acted, -acting, -acts. To act on each
other. —*in-ter-ac-tion n.* —*in-ter-ac-tive adj.*

in-ter-ac-tive ter-mi-nal (in-tēr'əkt'iv) *n.* A computer or data-
processing terminal capable of providing a source of both input and
output for the computer system to which it is connected.

in-ter-a-li-a (in-tēr'ə-lē-ə, -lē-ə) *adv.* [Lat.] Among other things.
in-ter-a-li-os (in-tēr'ə-lē-ōs, -lē-ōs) *adv.* [Lat.] Among other per-
sons.

in-ter-brain (in-tēr-brān) *n.* The diencephalon.

in-ter-breed (in-tēr-bréd) *v.* -bred (-bréd'), -breed-ing, -breeds.
—*vi.* 1. To breed with another kind or species. 2. To breed within a
narrow range or with closely related types or individuals: INBREED.
—*vt.* To cause to interbreed.

in-ter-ca-lary (in-tūr'kə-lēr-ē, in-tēr-kāl'ə-rē) *adj.* [Lat. *intercalari-*
us < *intercalare*, to intercalate.] 1. a. Inserted in the calendar to
make the calendar year correspond to the solar year. —Used of a day
or a month. b. Having an intercalary day or month inserted. —Used
of a year. 2. Interpolated.

in-ter-ca-late (in-tūr'kə-lāt) *vt.* -lated, -lat-ing, -lates. [Lat. *in-*
tercalare, *intercalat*: *inter*, among + *calare*, to proclaim.] 1. To
insert (a day or month) in a calendar. 2. To insert, interpolate, or
interpose. —*in-ter-ca-la-tion n.* —*in-ter-ca-la-tive adj.*

in-ter-cede (in-tēr-séd) *vi.* -ceded, -ced-ing, -cedes. [Lat. *inter-*
cedere, to intervene: *inter*, between + *cedere*, to go.] 1. To argue
on another's behalf. 2. To act as mediator in a dispute. —*in-ter-
ced-er n.*

in-ter-cel-lu-lar (in-tēr-sél'yə-lər) *adj.* Between or among cells.

in-ter-cept (in-tēr-sépt) *vt.* -cepted, -cept-ing, -cepts. [Lat.
intercipere, *intercept*: *inter*, between + *capere*, to seize.] 1. a. To
stop or interrupt the progress or course of. b. To take possession of
by catching (an opponent's ball), esp. in football. 2. To intersect.
3. Obs. To cut off from access or communication. 4. To prevent. —*n.*
(in-tēr-sépt). 1. Math. The distance from the origin of coordinates
along a coordinate axis to the point at which a line, curve, or surface
intersects the axis. 2. Interception <a radio intercept> —*in-ter-
cep-tive adj.*

öö boot ou out th thin th this ü cut ür urge y young
yöö abuse zh vision z about, item, edible, gallop, circus

**ADDENDUM 4 - *Webster's New Twentieth Century Dictionary*
Unabridged (2d ed. 1978)
Definitions of "Intentional" and "Intentionally"**

WEBSTER'S
NEW
TWENTIETH CENTURY
DICTIONARY
OF THE
ENGLISH LANGUAGE
UNABRIDGED

SECOND EDITION

BASED UPON THE BROAD FOUNDATIONS LAID DOWN BY

Noah Webster

EXTENSIVELY REVISED BY THE PUBLISHER'S EDITORIAL STAFF UNDER THE GENERAL SUPERVISION OF

JEAN L. McKECHNIE

INCLUDING ETYMOLOGIES, FULL PRONUNCIATIONS, SYNONYMS, AND AN ENCYCLOPEDIC SUPPLEMENT
OF GEOGRAPHICAL AND BIOGRAPHICAL DATA, SCRIPTURE PROPER NAMES, FOREIGN WORDS AND
PHRASES, PRACTICAL BUSINESS MATHEMATICS, ABBREVIATIONS, TABLES OF WEIGHTS AND MEASURES,
SIGNS AND SYMBOLS, AND FORMS OF ADDRESS

ILLUSTRATED THROUGHOUT

COLLINS  WORLD

1978

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4. in psychology, the relative strength of a stimulus or sensation.

Syn.—tension, force, strain, concentration, attention, eagerness, ardor, energy.

Inten'sive, *a.* [Fr. *intensif*, from *L. intensus*; see *intend*.] 1. increasing or causing to increase in degree or amount. 2. of or characterized by intensity; thorough, profound, and intense; not broad or extensive; concentrated or exhaustive. 3. of or characterized by logical intension. 4. in agriculture, designating a system of farming which aims at the increase of crop yield per unit area. 5. in grammar, giving force or emphasis; emphasizing; as, *oneself* is frequently *intensive*.

Inten'sive, *n.* 1. that which intensifies. 2. in grammar, an intensive word, prefix, etc.

Inten'sive-ly, *adv.* by increase of degree; in a manner to give force.

Inten'sive-ness, *n.* the condition or quality of being intensive.

Intent', *a.* [*L. intensus*, pp. of *intendere*, to stretch, intend.] 1. firmly directed or fixed; earnest; intense; as, an *intent* look. 2. (a) having the mind or attention firmly directed or fixed; engrossed; as, he was *intent* on his studies; (b) strongly resolved; as, he was *intent* on going.

Intent', *n.* 1. an intending. 2. something intended; specifically, (a) a purpose; object; (b) [Obs.] meaning. *to all intents and purposes*; in almost every respect; practically; virtually.

Inten-tā'tion, *n.* a threatening. [Obs.]

Inten-tion, *n.* [*L. intentio (-onis)*, a stretching out, exertion, purpose, from *intendere*, to stretch out, intend.] 1. a stretching or bending of the mind, as toward an object; hence, fixedness of attention; intendment; earnestness. [Archaic.] *Intention* is manifest when the mind, with great earnestness, and of choice, fixes its view on any idea, considers it on every side, and will not be called off by the ordinary solicitation of other ideas. —Locke. 2. the fixed direction of the mind to a particular object; a determination to do a specified thing or to act in a particular manner; as, it is my *intention* to proceed to Paris. 3. (a) anything intended; ultimate end or purpose; as, what is your *intention*? (b) [*pl.*] purpose in regard to marriage. 4. meaning or intent. [Archaic or Rare.] 5. in logic, the general concept of a thing. 6. in surgery, the manner or process by which a wound heals: the three degrees (*first*, *second*, and *third intention*) are distinguished by the relative amounts and types of granulation that occur. 7. the state of being strained. [Obs.] *first intention*; in logic, a first or general concept, as of an object as a whole. *second intention*; in logic, a conception gained by generalizing from the first conception.

Inten-tion'al, *a.* 1. having to do with intention or purpose. [Rare.] 2. intended; designed; done with design or purpose; as, the act was *intentional*, not accidental.

Syn.—purposed, designed, deliberate, intended, contemplated, premeditated, studied.

Inten-tion'al'i-ty, *n.* the quality of being intentional; aim; design.

Inten-tion'al-ly, *adv.* by design; purposely; not casually.

Inten-tioned (-shund), *a.* having (specified) plans or intentions; as, a generously *intentioned* person: used often in hyphenated compounds, as *ill-intentioned*.

Inten-tive, *a.* attentive; having the mind closely applied. [Obs.]

Inten-tive-ly, *adv.* closely; with close application. [Obs.]

Inten-tive-ness, *n.* closeness of attention or application of mind. [Obs.]

Inten-tly, *adv.* in an intent manner; with close attention or application; with eagerness or earnestness; as, to have the eyes *intently* fixed.

Inten'tness, *n.* the state of being intent; close application.

Int'er-, [ME. *enter-*, *inter-*; OFr. *entre-*, *inter-*; *L. inter-*, from *inter*, prep. between, among; during; *in*, in, within, and *-ter*, a comp. suffix.]

1. a prefix meaning *between, among*, as in *interflow, interchange*.
2. a prefix meaning *with or on each other* (or *one another*), together, mutual, reciprocal, mutually, reciprocally, as in *interact*.
in-tér' , v.i.; *interred*. *pt., pp.*; *interring*, *ppr.* [Ofr. *enterrer*; LL. *interrare*, to put in the earth; L. *in*, in, and *terra*, earth.] to place in the earth or in a tomb, as a dead body; to bury.
in-tér-act' , v.i. to act mutually; to perform reciprocal acts.
in-tér-act' , n. 1. intermediate employment or time.
2. an *entr'acte*.
in-tér-ac'tion' , n. 1. intermediate action.
2. action on each other; reciprocal action or effect.
in-tér-ac'tive, *a.* interacting.
in-tér-ad'di-tive, *n.* something interpolated, as a word or phrase in a sentence. [Rare.]
in-tér-a'gen-cy, *n.* an intervening or intermediate agency.
in-tér-a'gent, *n.* an intermediate agent.
in-tér-á'li-á, [L.] among other things.
in-tér-á'li-ös, [L.] among other persons.
in-tér-ail, *n.* an *entrail*. [Obs.]
in-tér-al-vé-ö-lär, *a.* [L. *inter*, between, and *alveolus*, a small cavity or hollow.]
1. in anatomy, lying between cells or cavities, especially of the lungs.
2. in zoology, between the alveoli; as, the *interalveolar* muscles of a sea urchin.
in-tér-am-bü-lä'cräl, *a.* relating to the *interambulacra*.
in-tér-am-bü-lä'crum, *n.*; *pl.* **in-tér-am-bü-lä'crä**, [*inter-*, and L. *ambulacrum*, an alley or covered way.] in zoology, a zone between two *ambulacra* in echinoderms.
in-tér-ä-mer'i-cän, *a.* between or among nations of North, South, and Central America.
in-tér-am'n-än, *a.* [LL. *interamnus*; *inter*, between, and *amnis*, river.] situated between rivers.
in-tér-an'i-mäte, *v.i.* to animate mutually. [Obs.]
in-tér-är-bö-rä'tion, *n.* the interlacing or mingling of the branches of trees. [Obs.]
in-tér-är-tic'ü-lär, *a.* in anatomy, being between the joints, or articulating parts of bones.
in-tér-ä-tom'ic, *a.* in physics and chemistry, acting between atoms.
in-tér-äu'lic, *a.* [L. *inter*, between, and *aula*, a hall,] existing or carried on between sovereigns or courts. [Rare.]
in-tér-äu-ric'ü-lär, *a.* in anatomy, situated between the auricles.
in-tér-ax'äl, *a.* relating to an *interaxis*.
in-tér-ax'il-läry, *a.* in botany, between the axils of leaves.
in-tér-ax'is, *n.*; *pl.* **in-tér-ax'ës**, [L. *inter*, between, and *axis*, axis,] in architecture, the space between axes.
in-tér-bas-tä'tion, *n.* quilting. [Obs.]
in-tér-bed'ded, *a.* in geology, *interstratified*; *interleaved*.
in-tér-bör-ough (-ö), *a.* between or among boroughs.
in-tér-brä'chi-äl, *a.* [L. *inter*, between, and *brachium*, or *brachium*, arm.] in zoology, situated between *brachia*, as in the starfish.
in-tér-bräin, *n.* in anatomy, the *diencephalon*.
in-tér-brän'chi-äl, *a.* in zoology, situated between the *branchia* or gills, as in fishes.
in-tér-breed' , v.i. to cross different varieties of (animals or plants) in breeding.
in-tér-breed' , v.i. to breed with each other; said of different varieties of animals or plants.
in-tér-cä-lär, *a.* *intercalary*. [Obs.]
in-tér-cä-läry, *a.* [L. *intercalarius*, *intercalaris*, that is inserted, from *intercalare*, to intercalate.]
1. added to the calendar: said of a day, month, etc. added as in leap year to make the calendar correspond to the solar year.
2. having such a day, month, etc. added: said of a year.
3. interpolated; added or inserted; introduced; as, *intercalary* lines.
in-tér-cä-läte, *v.i.*; *intercalated*, *pt., pp.*; *intercalating*, *ppr.* [L. *intercalatus*, *pt. of intercalare*, to insert; *inter*, between, and *calare*, to call, proclaim.]
1. to add (a day, month, etc.) to the calendar.
2. to interpolate or insert.
3. in geology, to insert, as a layer of rock between two other layers.

in-tĕr-cā-lā'tion, *n.* 1. an intercalating; interpolation.
2. something intercalated.

in"tĕr-cā-ro't'ic, in"tĕr-cā-ro'r'id, *a.* in anatomy, between the outer and inner carotid arteries.

in-tĕr-cār'pāl, *a.* in anatomy, situated between the bones of the wrist.

in-tĕr-cav'ĕrn-ous, *a.* in anatomy, relating to or connected with the cavernous sinuses of the brain.

in-tĕr-cēd', *v.i.*; interceded, *pl., pp.*; interceding, *ppr.* [*L. intercedere*, to go or come between; interpose; *inter*, between, and *cedere*, to go.]
1. to pass between; to intervene. [Obs.]
He supposes that a vast period *interceded* between that origination and the age in which he lived. —Hale.
2. to mediate; to interpose; to intervene between contending parties with a view to reconciling them.
3. to plead or make a request in favor of another or others.
4. in ancient Rome, to interpose a veto: said of a tribune or other magistrate.

Syn.—interpose, mediate, interfere, inter-meddle.

in-tĕr-cēd'ence, *n.* the act of mediating, interposing, or interceding. [Rare.]

in-tĕr-cēd'ent, *a.* [*L. intercedens* (-entis), *ppr.* of *intercedere*, to go or come between,] passing between; mediating; pleading for. [Rare.]

in-tĕr-cēd'ent'ly, *adv.* in an intercedent manner. [Rare.]

in-tĕr-cēd'ĕr, *n.* one who intercedes or interposes between parties to effect a reconciliation; a mediator; an intercessor.

in-tĕr-cel'lū-lār, *a.* lying between or among cells.

in-tĕr-cen'trāl, *a.* 1. between or connecting centers.
2. pertaining to an inter-centrum.
intercentral nerves: in physiology, nerves that convey impulses from nerve center to nerve center, as distinguished from nerves that transmit impulses between surface points and nerve centers.

in-tĕr-cen'trum, *n.*; *pl.* in-tĕr-cen'trā, [*L. inter*, between, and *centrum*, center.] in anatomy, a centrum intervening between vertebrae, as in the spine of a fossil batrachian.

in'tĕr-cept, *n.* in geometry, the part of a line, plane, etc. intercepted.

in-tĕr-cept', *v.t.*; intercepted, *pl., pp.*; intercepting, *ppr.* [*L. interceptus*, *pp.* of *intercipere*, to take between, interrupt; *inter*, between, and *capere*, to take.]
1. to seize or stop on the way, before arrival at the intended place; to stop or interrupt the course of; to cut off.
2. to stop, hinder, or prevent; as, he *intercepted* the escape of the thief.
3. to cut off communication with, sight of, etc.
4. in mathematics, to cut off, mark off, or bound between two points, lines, or planes.

in-tĕr-cept'ĕr, *n.* one who or that which intercepts; an interceptor.

in-tĕr-cep'tion, *n.* the act of intercepting or the fact of being intercepted.

in-tĕr-cep'tive, *a.* intercepting or tending to intercept.

in-tĕr-cep'tōr, *n.* a person or thing that intercepts; especially, a fast-climbing military airplane used in fighting off surprise attacks.

in-tĕr-ces'sion (-sesh'un), *n.* [*L. intercessio*, from *intercedere*, to come or go between, *intercede*.] the act of interceding; mediation between conflicting parties with a view to reconciliation; prayer or pleading in behalf of another or others, or sometimes against another.

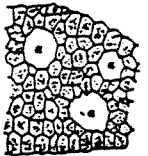
Your *intercession* now is needless grown;
Retire, and let me speak with her alone.
—Dryden.

in-tĕr-ces'sion-āl, *a.* containing, characterized by, or pertaining to intercession or entreaty.

in-tĕr-ces'sion-āte, *v.t.* to implore. [Obs.]

in-tĕr-ces'sōr, *n.* 1. a mediator; one who intercedes; one who pleads in behalf of another.
2. a bishop who, during a vacancy of the see, administers the bishopric till a successor is elected.

in"tĕr-ces-sō'ri-āl, *a.* pertaining to an intercessor.



2.6. INTERCELLULAR SPACES

ADDENDUM 5 - *Black's Law Dictionary*
Definition of "Intentionally"

BLACK'S LAW DICTIONARY®

Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

ABRIDGED SIXTH EDITION

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certain to result from it. Sec. 8A. See *Intentional tort*.

Intent and motive should not be confused. Motive is what prompts a person to act, or fail to act. Intent refers only to the state of mind with which the act is done or omitted.

See also *Aforethought*; *Constructive intent*; *Intention*; *Larcenous intent*; *Legislative intent*; *Malice aforethought*; *Manifestation of intention*; *Mens rea*; *Predatory intent*; *Premeditation*; *Presumed intent*; *Scienter*; *Specific intent*; *Willful*.

Common intent. The natural sense given to words.

Criminal intent. See *Criminal*; *Knowingly*; *Mens rea*; *Premeditation*.

General intent. In criminal law, the intent to do that which the law prohibits. It is not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated.

Objective intent. The intent attributed to a person who appears to a reasonable third person to be making an offer to contract.

Specific intent. In criminal law, the intent to accomplish the precise act which the law prohibits; e.g. assault with intent to rape.

Transferred intent. In tort law, if A, intending to strike B, misses B and hits C instead, the intent to strike B is transferred and supplies the necessary intent for the tort against C. See also *Transferred intent doctrine*.

Intention. Determination to act in a certain way or to do a certain thing. Meaning; will; purpose; design. "Intention," when used with reference to the construction of wills and other documents, means the sense and meaning of it, as gathered from the words used therein. When used with reference to civil and criminal responsibility, a person who contemplates any result, as not unlikely to follow from a deliberate act of his own, may be said to intend that result, whether he desires it or not. See also *Four corners rule*; *Intent*; *Intentionally*.

Intentional. See *Intent*; *Intention*.

Intentionally. To do something purposely, and not accidentally or involuntarily. Person acts "intentionally" if he desires to cause consequences of his act or he believes consequences are substantially certain to result. See also *Intent*; *Intention*.

Intentional tort. A tort in which the actor is expressly or impliedly judged to have possessed intent or purpose to injure.

Intent to kill. An element in certain aggravated assaults and batteries which requires the prosecution to prove the intent to kill in addition to the

other elements of the assault and battery. See *Aggravated assault*; *Malice aforethought*; *Premeditation*.

Inter /inter. Lat. Among; between.

Inter alia /inter éyl(i)yə/*áliyə/. Among other things. A term anciently used in pleading, especially in reciting statutes, where the whole statute was not set forth at length. *Inter alia enactatum fuit*, among other things it was enacted.

Intercept. As used in federal wiretapping statute, means the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device. 18 U.S.C.A. § 2510. See *Eavesdropping*; *Interception*; *Wiretapping*.

Interception. Within Federal Communications Act, prohibiting interception of communication by wire or radio, indicates taking or seizure by the way or before arrival at destined place, and does not ordinarily connote obtaining of what is to be sent before, or at the moment, it leaves the possession of the proposed sender, or after, or at the moment, it comes into possession of intended receiver. Communications Act of 1934, § 605, 47 U.S.C.A. § 605. See *Eavesdropping*; *Wiretapping*.

Interchangeably. By way of exchange or interchange. This term properly denotes the method of signing deeds, leases, contracts, etc., executed in duplicate, where each party signs the copy which he delivers to the other.

Intercompany transaction. A transaction between two affiliated companies such as a parent and a subsidiary.

Intercourse. Communication; literally, a running or passing between persons or places; commerce; sexual relations.

Interdict /intərdikt/. A prohibitory decree.

Interest. The most general term that can be employed to denote a right, claim, title, or legal share in something. In its application to real estate or things real, it is frequently used in connection with the terms "estate," "right," and "title." More particularly it means a right to have the advantage accruing from anything; any right in the nature of property, but less than title.

The word "interest" is used throughout the Restatement of Torts, Second, to denote the object of any human desire. Sec. 1.

The word "interest" is used in the Restatement of Property both generically to include varying aggregates of rights, privileges, powers and immunities and distributively to mean any one of them. Sec. 5.

"Interest" which may disqualify a judge from hearing a suit is a personal proprietary or pecuniary interest or one affecting individual rights of

ADDENDUM 6 - *Black's Law Dictionary*
Definition of "Bad Faith"

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sified as nonbusiness. *See also* Nonbusiness bad debts.

A deduction is permitted if a business account receivable subsequently becomes worthless providing the income arising from the debt was previously included in income. The deduction is allowed only in the year of worthlessness.

Bad-debt loss ratio. The proportion of the total receivables volume that is never collected by a business.

Bad debt reserve. An account used in book-keeping to reflect the true worth of receivables in the balance sheet by estimating those debts which may not be collected and which ultimately will be written off as bad debts and claimed as a deduction for tax purposes. *See also* Reserve.

Bad faith. The opposite of "good faith," generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. Term "bad faith" is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will. An intentional tort which results from breach of duty imposed as consequence of relationship established by contract.

Insurance. "Bad faith" on part of insurer is any frivolous or unfounded refusal to pay proceeds of policy; it is not necessary that such refusal be fraudulent. For purposes of an action against an insurer for failure to pay a claim, such conduct imports a dishonest purpose and means a breach of a known duty (i.e., good faith and fair dealing), through some motive of self-interest or ill will; mere negligence or bad judgment is not bad faith.

Badger. To harass, pester, or bedevil persistently especially in a manner likely or designed to confuse, annoy or wear down. *See also* Harassment.

Badges of fraud. A circumstance or other fact accompanying a transfer of property that the courts recognize as an especially reliable indicator of the transferor's actual intention to hinder, delay, or defraud creditors in making the transfer. It is defined as a fact tending to throw suspicion upon a transaction, and calling for an explanation. It is a suspicious circumstance that overhangs a transaction, or appears on the face of the papers. A circumstance which does not alone prove fraud, but which warrants inference of fraud, especially where there is a concurrence of many such badges. Recognized "badges of fraud" include fictitious consideration, false statements as to consideration, transactions different from

usual course of doing business, transfer of all of a debtor's property, insolvency, confidential relationship of parties, and transfers in anticipation of suit or execution.

Bad motive. Intentionally doing a wrongful act knowing at the time that it is wrongful. *See* Bad faith.

Bad title. One which conveys no property to the purchaser of the estate. One which is so radically defective that it is not marketable, and hence such that a purchaser cannot be legally compelled to accept it. *Compare* Marketable title.

Bail, v. To procure release of one charged with an offense by insuring his future attendance in court and compelling him to remain within jurisdiction of court. -To deliver the defendant to persons who, in the manner prescribed by law, become security for his appearance in court. To set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and a place certain, which security is called "bail," because the party arrested or imprisoned is delivered into the hands of those who bind themselves for his forthcoming. *See also* Civil bail; Excessive bail; Jump bail; Release on own recognizance.

Bail, n. Monetary amount for or condition of pretrial release from custody, normally set by a judge at the initial appearance. The purpose of bail is to ensure the return of the accused at subsequent proceedings. If the accused is unable to make bail, or otherwise unable to be released on his or her own recognizance, he or she is detained in custody. The Eighth Amendment (U.S. Const.) provides that excessive bail shall not be required.

The surety or sureties who procure the release of a person under arrest, by becoming responsible for his appearance at the time and place designated. Those persons who become sureties for the appearance of the defendant in court.

Bail absolute. Sureties whose liability is conditioned upon the failure of the principal to duly account for money coming to his hands as administrator, guardian, etc.

Bail bond. A three-party contract which involves the state, accused and surety and under which surety guarantees the state that accused will appear at subsequent court proceedings.

A written undertaking, executed by the defendant or one or more sureties, that the defendant designated in such instrument will, while at liberty as a result of an order fixing bail and of the execution of a bail bond in satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders and processes of the court, and that in the event he fails to do so, the signers of the bond will pay to

ADDENDUM 7 - MCL 30.411

MICHIGAN COMPILED LAWS ANNOTATED
CHAPTER 30. CIVILIAN DEFENSE
EMERGENCY MANAGEMENT ACT

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Current through P.A. 2001, No. 114
of the 2001 Regular Session, 91st Legislature

30.411. Personnel of disaster relief forces, powers, duties, rights, privileges and immunities and compensation

Sec. 11. (1) Personnel of disaster relief forces while on duty shall:

(a) If they are an employee of the state, have the powers, duties, rights, privileges, and immunities of and receive the compensation incidental to their employment.

(b) If they are employees of a county, municipality, or other governmental agency regardless of where serving, have the powers, duties, rights, privileges, and immunities and receive the compensation incidental to their employment.

(c) If they are not employees of the state, a county, municipality, or other governmental agency, be entitled to the same rights and immunities as are provided by law for the employees of the state. All personnel of disaster relief forces shall, while on duty, be subject to the operational control of the authority in charge of disaster relief activities in the area in which they are serving, and shall be reimbursed for all actual and necessary travel and subsistence expenses.

(2) The state or any political subdivision, or the agents or representatives of the state or any political subdivision, shall not be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer disaster relief worker, or a member of any agency engaged in disaster relief activity. In addition, a volunteer disaster relief worker or a member of any agency engaged in disaster relief activity shall not be liable in a civil action for damages resulting from an act or omission arising out of and in the course of the person's good faith rendering of that activity, unless the person's act or omission was the result of that person's gross negligence or willful misconduct. This act shall not affect the right of a person to receive benefits or compensation to which he or she may otherwise be entitled to under the workmen's compensation law, any pension law, or any act of congress.

(3) Subsection (2) shall not apply to a person engaged in disaster relief activity for remuneration beyond reimbursement for out-of-pocket expenses in connection with the activity.

(4) The state, a political subdivision, or, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or a political subdivision, or any volunteer or auxiliary disaster relief worker or member of any agency engaged in any disaster relief activity, complying with or reasonably attempting to comply with this act, or any order, rule promulgated pursuant to the provisions of this act, or pursuant to any ordinance relating to any precautionary measures enacted by a political subdivision, shall not be liable for the death of or injury to persons, or for damage to property, as a result of that activity.

(5) A person licensed to practice medicine or osteopathic medicine and surgery, or a licensed hospital, registered nurse, practical nurse, dentist, veterinarian, or paramedical person, whether licensed in this or another state or by the federal government or a branch of the armed forces of the United States, or a student nurse undergoing training in a licensed hospital in this or another state, that renders services during a state of disaster declared by the governor and at the express or implied request of a state official or agency or county or local coordinator or executive body, is considered an authorized disaster relief worker or facility and is not liable for an injury sustained by a person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained. The immunity granted by this subsection does not apply in the event of a willful act or omission. If a civil action for malpractice is filed alleging a willful act or omission resulting in injuries, the services rendered which resulted in those injuries shall be judged according to the standards required of persons licensed in this state to

perform those services.

(6) A licensed dentist, veterinarian, registered nurse, practical nurse, or licensed paramedical person, whether licensed in this or another state or by the federal government or a branch of the armed forces of the United States, or a student nurse undergoing training in a licensed hospital in this or another state, during a state of disaster declared by the governor, may practice, in addition to the authority granted by other statutes of this state, the administration of anesthetics; minor surgery; intravenous, subcutaneous, or intramuscular procedure; or oral and topical medication; or a combination thereof under the supervision of a member of the medical staff of a licensed hospital of this state, and may assist the staff member in other medical and surgical proceedings.

(7) A person owning or controlling real estate or other premises who voluntarily and without compensation grants to the state or a political subdivision a license or privilege, or otherwise permits the state or a political subdivision to inspect, designate, and use the whole or any part or parts of the real estate or other premises for the purpose of sheltering persons during an actual, impending, mock, or practice disaster, together with his or her successors in interest, if any, shall not be civilly liable for negligently causing the death of or injury to any person on or about the real estate or premises under such license, privilege, or permission or for loss or damage to the property of the person.

(8) A person owning or controlling real estate or other premises who has gratuitously granted the use of the real estate or other premises for the purposes stated in this section shall be legally obligated to make known to the licensee any hidden dangers or safety hazards which are known to the owner or occupant of the real estate or premises which might possibly result in the death or injury or loss of property to a person using the real estate or premises.

CREDIT(S)

1994 Main Volume

Amended by P.A.1990, No. 50, § 1, Imd. Eff. April 6, 1990.

HISTORICAL AND STATUTORY NOTES

1994 Main Volume

Source:

P.A.1976, No. 390, § 11, Imd. Eff. Dec. 30, 1976.

C.L.1970, § 30.411.

The 1990 amendment rewrote this section, which prior thereto read:

"(1) Personnel of disaster relief forces while on duty shall:

"(a) If they are an employee of the state, have the powers, duties, rights, privileges, and immunities and receive the compensation incidental to their employment.

"(b) If they are employees of a county, municipality, or other governmental agency regardless of where serving, have the powers, duties, rights, privileges, and immunities and receive the compensation incidental to their employment.

"(c) If they are not employees of the state, a county, municipality, or other governmental agency, be entitled to the same rights and immunities as are provided by law for the employees of the state. All personnel of disaster relief forces shall, while on duty, be subject to the operational control of the authority in charge of disaster relief activities in the area in which they are serving, and shall be reimbursed for all actual and necessary travel and subsistence expenses.

"(2) Neither the state nor any political subdivision, nor the agents or representatives of the state or any political subdivision, shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer disaster relief worker, or a member of any agency engaged in disaster relief activity. This act shall not affect the right of a person to receive benefits or compensation to which he might otherwise be entitled under the workmen's compensation law, any pension law, or any act of congress.

"(3) Neither the state nor any political subdivision, nor, except in cases of wilful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or a political subdivision, nor any volunteer or auxiliary disaster relief worker or member of any agency engaged in any disaster relief activity, complying with or reasonably attempting to comply with this act, or any order, rule promulgated pursuant to the provisions of this act, or pursuant to any ordinance relating to blackout or other precautionary measures enacted by a political subdivision, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity.

"(4) A person licensed to practice medicine or osteopathic medicine and surgery, or a licensed hospital, registered nurse, practical nurse, dentist, veterinarian, or paramedical person, whether licensed in this or another state or by the federal government or a branch of the armed forces of the United States, or a student nurse undergoing training in a licensed hospital in this or another state, that renders services during a state or disaster declared by the governor and at the express or implied request of a state official or agency or county or local coordinator or executive body, is considered an authorized disaster relief worker or facility and is not liable for an injury sustained by a person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained. The immunity granted by this subsection does not apply in the event of a wilful act or omission. If a civil action for malpractice is filed alleging a wilful act or omission resulting in injuries, the services rendered which resulted in those injuries shall be judged according to the standards required of persons licensed in this state to perform those services.

"(5) A licensed dentist, veterinarian, registered nurse, practical nurse, or licensed paramedical person, whether licensed in this or another state or by the federal government or a branch of the armed forces of the United States, or a student nurse undergoing training in a licensed hospital in this or another state, during a state of disaster declared by the governor, may practice, in addition to the authority granted by other statutes of this state, the administration of anesthetics; minor surgery; intravenous, subcutaneous, or intramuscular procedure; or oral and topical medication; or a combination thereof under the supervision of a member of the medical staff of a licensed hospital of this state, and may assist the staff member in other medical and surgical proceedings.

"(6) A person owning or controlling real estate or other premises who voluntarily and without compensation grants to the state or a political subdivision a license or privilege, or otherwise permits the state or a political subdivision to inspect, designate, and use the whole or any part or parts thereof for the purpose of sheltering persons during an actual, impending, mock, or practice disaster shall, together with his successors in interest, if any, not be civilly liable for negligently causing the death of or injury to any person on or about such real estate or premises under such license, privilege, or permission or for loss or damage to the property of such person.

"(7) A person owning or controlling real estate or other premises who has gratuitously granted the use thereof for the purposes stated herein shall be legally obligated to make known to the licensee any hidden dangers or safety hazards which are known to the owner or occupant of the real estate or premises which might possibly result in the death or injury or loss of property to a person using the real estate or premises.

"(8) As used in this section, 'political subdivision' means a county, municipality, school district, or any other governmental unit, agency, body, board, or commission which is not a state department, board, commission, or agency of state government."

Prior Laws:

C.L.1948, § 30.227.

P.A.1953, No. 154, § 7.

C.L.1970, § 30.227.

P.A.1974, No. 84, § 1.

MI ST 30.411

Page 4

M. C. L. A. 30.411

MI ST 30.411

END OF DOCUMENT

ADDENDUM 8 - MCL 691.1557a

**MICHIGAN COMPILED LAWS ANNOTATED
CHAPTER 691. JUDICIARY
COMMUNITY DISPUTE RESOLUTION ACT**

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Current through P.A. 2001, No. 114
of the 2001 Regular Session, 91st Legislature

691.1557a. Mediators; liability for civil damages

Sec. 7a. A mediator of a community dispute resolution center shall not be held liable for civil damages for any act or omission in the scope of his or her employment or function as a mediator, unless he or she acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of another.

CREDIT(S)

2000 Main Volume

P.A.1988, No. 260, § 7a, added by P.A.1993, No. 286, § 1, Imd. Eff. Dec. 28, 1993.

M. C. L. A. 691.1557a

MI ST 691.1557a

END OF DOCUMENT

ADDENDUM 9 - MCL 442.365

MICHIGAN COMPILED LAWS ANNOTATED
CHAPTER 442. SALES
ART MULTIPLES SALES ACT

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Current through P.A. 2001, No. 114
of the 2001 Regular Session, 91st Legislature

442.365. Enforcement of act

Sec. 15. (1) In an action to enforce this act all of the following apply:

(a) A disclaimer made pursuant to section 2(2) [FN1] regarding an item of relevant information shall be effective unless the claimant can establish that the art merchant failed to make reasonable inquiries, according to custom and usage of trade, to ascertain the information, or that the information would have been ascertained as a result of reasonable inquiry.

(b) The court may allow a prevailing party the costs of the action, and may allow a prevailing purchaser reasonable attorney fees. If the court determines that a purchaser's action was brought in bad faith, it may allow the art merchant reasonable attorney fees.

(2) An action to enforce this act shall be brought within the period prescribed by section 2725 of the uniform commercial code, Act No. 174 of the Public Acts of 1962, being section 440.2725 of the Michigan Compiled Laws for an action for a breach of warranty.

CREDIT(S)

1989 Main Volume

P.A.1987, No. 40, § 15, Eff. Dec. 9.

[FN1] Section 442.352(2).

M. C. L. A. 442.365

MI ST 442.365

END OF DOCUMENT

ADDENDUM 10 - MCL 445.1905

**MICHIGAN COMPILED LAWS ANNOTATED
CHAPTER 445. TRADE AND COMMERCE
UNIFORM TRADE SECRETS ACT**

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Current through P.A. 2001, No. 114
of the 2001 Regular Session, 91st Legislature

445.1905. Claims made in bad faith; motion to terminate injunction

Sec. 5. If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.

CREDIT(S)

2001 Electronic Pocket Part Update

P.A.1998, No. 448, § 5, Imd. Eff. Dec. 30, 1998.

HISTORICAL AND STATUTORY NOTES

2001 Electronic Pocket Part Update

1998 Legislation

For effective date and applicability provisions of P.A.1998, No. 448, see § 445.1910, and the Historical and Statutory Notes following.

M. C. L. A. 445.1905

MI ST 445.1905

END OF DOCUMENT

ADDENDUM 11 - MCL 600.2919

MICHIGAN COMPILED LAWS ANNOTATED
CHAPTER 600. REVISED JUDICATURE ACT OF 1961
REVISED JUDICATURE ACT OF 1961
CHAPTER 29. PROVISIONS CONCERNING SPECIFIC ACTIONS

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Current through P.A. 2001, No. 114
of the 2001 Regular Session, 91st Legislature

600.2919. Damage to land; treble damages, single damages; waste

Sec. 2919. (1) **Treble and single damages.** Any person who:

(a) cuts down or carries off any wood, underwood, trees, or timber or despoils or injures any trees on another's lands, or

(b) digs up or carries away stone, ore, gravel, clay, sand, turf, or mould or any root, fruit, or plant from another's lands, or

(c) cuts down or carries away any grass, hay, or any kind of grain from another's lands

without the permission of the owner of the lands, or on the lands or commons of any city, township, village, or other public corporation without license to do so, is liable to the owner of the land or the public corporation for 3 times the amount of actual damages. If upon the trial of an action under this provision or any other action for trespass on lands it appears that the trespass was casual and involuntary, or that the defendant had probable cause to believe that the land on which the trespass was committed was his own, or that the wood, trees, or timber taken were taken for the purpose of making or repairing any public road or bridge judgment shall be given for the amount of single damages only.

(2) **Waste by holder of present estate, double damages.** (a) Any guardian, tenant in dower, life tenant, or tenant for years who commits or suffers any waste, during his term or estate, to the lands, tenements or hereditaments, without having a lawful license to do so, is liable for double the amount of actual damages. Any joint tenant or tenant in common who commits or suffers waste of the lands, tenements, or hereditaments held in joint tenancy, without having a lawful license in writing to do so, is liable for double the amount of actual damages at the suit of his cotenant.

(b) A claim under this provision may be brought by the person having the next immediate estate, in fee, for life, or for years or by any person who has the remainder or reversion in fee or for life after an intervening estate for life or for years; and each of the parties shall recover damages according to his estate in the premises. A joint tenant or tenant in common may bring the claim in case of waste by one of his joint tenants or tenants in common. An heir, whether of full age or not, after coming into possession of his inheritance, may maintain a claim for waste done in the time of his ancestor as well as in his own time, unless recovery has been had by the executor or administrator of the ancestor. A tenant who assigns his full interest is not liable for waste done or suffered by his assignees while he remains out of possession of the premises.

(3) **Threatened waste, injunction, damages.** (a) The circuit court shall grant injunctions to stay and prevent threatened trespass when the remedies provided by subsection (1), above, are not fully adequate and in any case where the trespass is of a continuing nature.

(b) In any case where there is not a plain, adequate, and complete remedy provided for waste by subsection (2), above, or where waste is threatened the circuit court may grant injunctions to stay and prevent waste.

(c) Having taken jurisdiction of the case the circuit court may at the same time dispose of all questions involved,

including the assessing and awarding of money damages.

(4) Waste after commencement of action, restraining order, contempt. After the commencement of any action based on a claim for damages for waste, or for the recovery of land, or for the possession of land the defendant shall not make any waste of the land in demand or premises in question during the pendency of the action. If the defendant commits, threatens to commit, or makes preparations to commit waste the court in which the action is pending or any circuit judge or circuit court commissioner may make, on the application of the plaintiff, an order restraining the defendant from the commission of any waste or further waste of the land in demand or premises in question. Any person violating the terms of any such order is guilty of a contempt of the court in which the action is pending, which is punishable as other cases of contempt.

(5) Waste on land under levy, restraining order, contempt. If any person commits, threatens to commit, or makes preparations to commit any waste on real estate which has been attached or levied upon by execution in any civil action, the court from which the execution or attachment issued or any circuit judge or circuit court commissioner may make, on the application of the plaintiff, an order restraining the person from committing any waste or further waste on the land which has been attached or levied upon. Any person who shall violate the terms of any such order is guilty of contempt of the court in which the action is pending and is punishable as in other cases of contempt.

(6) Land sold on execution, liability of person entitled to possession, acts after sale not waste. (a) If, at any time after the sale of real estate on execution and before a deed is executed in pursuance of the sale, the defendant in the execution or any other person commits waste on the real estate or removes from it any buildings, fences, or other fixtures belonging to the land which would pass to the grantee by a deed of conveyance of the land, the purchaser at the sale or any person who has acquired his rights may have and maintain, against the person doing the injury and against any other person who has the buildings, fences, or fixtures in his possession after their removal, the same actions which the absolute owner of the premises would be entitled to.

(b) Whenever any lands or tenements are sold by virtue of an execution issued upon any judgment, the person to whom the conveyance is executed by the sheriff pursuant to the sale has a claim for damages for any waste committed on the premises by any person after the sale.

(c) Any person entitled to the possession of lands or tenements sold under execution may use and enjoy the premises until the period of redemption has run in the following ways without being guilty of waste:

(i) He may in all cases use and enjoy the premises sold in the same manner and for the same purposes in and for which they were used and enjoyed prior to the sale, doing no permanent injury to the freehold;

(ii) If the premises sold were buildings or other erections he may make necessary repairs to them although he shall not make alterations in the form or structure of them;

(iii) If the premises sold were land, he may use and improve the land in the ordinary course of husbandry, but he shall not be entitled to any crops growing on the premises at the expiration of the period of redemption;

(iv) He may apply any wood or timber on the land to the necessary repair of any fences, buildings, or erections which were on the premises at the time of sale;

(v) If he is in actual occupation of the land sold he may take necessary firewood from the land for the use of his family.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

Source:

P.A.1961, No. 236, § 2919, Eff. Jan. 1, 1963.

C.L.1948, § 600.2919.

C.L.1970, § 600.2919.

Prior Laws:

R.S.1846, c. 79, § 31; c. 90, §§ 21, 24, 25, 27, 34, 35, 36; c. 110, §§ 1
to 11, 17; c. 111, §§ 1, 2; c. 112, § 5.

P.A.1851, No. 184.

P.A.1855, No. 120.

ADDENDUM 12 - Model Sales Representative Act

MODEL BILL FOR PROMPT PAYMENT OF POST-TERMINATION

COMMISSIONS TO SALES REPRESENTATIVES

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Note: This is the text that the Bureau recommends be enacted by each state. Due to various factors, the actual language enacted in a given state may be marginally or substantially different from this Model Bill.

A BILL TO BE ENTITLED

AN ACT

For the purpose of requiring principal to pay commissions owed to a sales representative within a certain period of time after termination; providing for certain additional damages and attorney's fees if post-termination commissions are not paid timely; providing for attorney's fees to be awarded against persons bringing frivolous actions; declaring personal jurisdiction over certain non-resident principals; providing any agreements that waive the requirements of this Act are void.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF _____

ARTICLE _____

X-001. As used in this article, the following words have the meanings indicated:

(A) "Commissions" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the amount of orders or sales or as a specified amount per order or per sale.

(B) "Person" means an individual, corporation, partnership, association, estate, trust, or any other legal entity.

(C) "Principal" means a person who:

(1) Manufactures, produces, imports, or distributes a tangible product for wholesale;

(2) Contracts with or employs a sales representative to solicit orders in this state for the product; and

(3) Compensates the sales representative, in whole or in part, by commission.

(D) "Sales Representative" means a person who:

- (1) Contracts with or is employed by a principal to solicit wholesale orders;
- (2) Is compensated, in whole or in part, by commission;
- (3) Does not place orders or purchase for his own account or for resale; and
- (4) Does not sell or take orders for the sale of products to the ultimate consumer.

(E) "Termination" means the end of services performed by the sales representative for the principal whether by expiration of the contract, discharge, or resignation.

X-002. When a contract between a sales representative and a principal is terminated for any reason, the principal shall pay the sales representative all commissions due to the sales representative within 14 days after the effective date of such termination. Commissions that become due after termination shall be paid within 14 days after the date on which the commissions became due.

X-003 When Commissions Become Due

(A) The terms of the contract between the principal and sales representative shall determine when a commission becomes due.

(B) If the time when commissions become due cannot be determined by a contract between the principal and sales representative, the past practices between the parties shall control or, if there are no past practices, the custom and usage prevalent in this State for the business that is the subject of the relationship between the parties shall control.

X-004. A principal who fails to comply with the provisions of X-002 of this subtitle shall be liable to the sales representative in a civil action for:

(A) All amounts due the sales representative plus additional damages in an amount not to exceed two times the amount of commissions due the sales representative; and

(B) Attorney's fees reasonably incurred by the sales representative in the action, and court costs.

X-005. Where the court determines that an action brought by a sales representative against a principal under this Article is frivolous, the sales representative may be liable to the principal for attorney's fees actually and reasonably incurred by the principal in defending the action and court costs.

X-006. A principal who is not a resident of this state who contracts with a sales representative to solicit orders in this state is declared to be doing business in this state for purposes of the exercise of personal jurisdiction over non-residents under Code Section _____ [cite appropriate "doing business" or "long-arm" statute].

X-007. Nothing in this Article shall invalidate or restrict any other or additional right or remedy available to a sales representative, or preclude a sales representative from seeking to recover in one action on all claims against a principal.

X-008. A provision in any contract between a sales representative and a principal purporting to waive any provision of this Article, whether by expressed waiver or by a contract subject to the laws of another state, shall be void.

SECTION 2. This Act shall take effect _____, 19__

ADDENDUM 13 - Ind. Code Ann. § 24-4-7-5

WEST'S ANNOTATED INDIANA CODE
TITLE 24. TRADE REGULATIONS; CONSUMER SALES AND CREDIT
ARTICLE 4. REGULATED BUSINESSES
CHAPTER 7. CONTRACTS WITH WHOLESALE SALES REPRESENTATIVES

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Current through End of 2001 1st Regular Sess.

24-4-7-5 Termination of contract; payment of commissions accrued; failure to comply; attorney's fees and costs

Sec. 5. (a) If a contract between a sales representative and a principal is terminated, the principal shall, within fourteen (14) days after payment would have been due under the contract if the contract had not been terminated, pay to the sales representative all commissions accrued under the contract.

(b) A principal who in bad faith fails to comply with subsection (a) shall be liable, in a civil action brought by the sales representative, for exemplary damages in an amount no more than three (3) times the sum of the commissions owed to the sales representative.

(c) In a civil action under subsection (b), a principal against whom exemplary damages are awarded shall pay the sales representative's reasonable attorney's fees and court costs. However, if judgment is entered for the principal and the court determines that the action was brought on frivolous grounds, the court shall award reasonable attorney's fees and court costs to the principal.

CREDIT(S)

1995 Main Volume


As added by P.L.238-1985, SEC.1.

LAW REVIEW AND JOURNAL COMMENTARIES

Two-way fee shifting on summary judgment or dismissal: Equitable deterrent to unmeritorious lawsuits. 23 Pepp.L.Rev. 125 (1995).

LIBRARY REFERENCES

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Master and Servant  70(2).

WESTLAW Topic No. 255.

C.J.S. Employer-Employee Relationship §§ 140 et seq. 165.

I.C. 24-4-7-5

IN ST 24-4-7-5

END OF DOCUMENT

ADDENDUM 14 - Tenn. Code Ann. § 47-50-114

TENNESSEE CODE ANNOTATED
TITLE 47 COMMERCIAL INSTRUMENTS AND TRANSACTIONS
CHAPTER 50 MISCELLANEOUS PROVISIONS

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Current through End of 2000 Reg. Sess.

47-50-114 Sales representatives -- Commissions.

(a) As used in this section:

(1) "Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the dollar amount of orders or sales;

(2) "Principal" means a person who:

(A) Manufactures, produces, imports, or distributes a product for wholesale;

(B) Contracts with a sales representative to solicit orders for the product; and

(C) Compensates the sales representative, in whole or in part, by commission;

(3) "Sales representative" means a person who contracts with a principal to solicit wholesale orders and who is compensated, in whole or in part, by commission, but does not include one who places orders or purchases for such person's own account for resale; and

(4) "Termination" means the end of services performed by the sales representative for the principal whether by discharge, resignation, or expiration of a contract.

(b)(1) The terms of the contract between the principal and sales representative shall determine when a commission becomes due.

(2) If the time when the commission is due cannot be determined by a contract between the principal and sales representative, the past practices between the parties shall control or, if there are no past practices, the custom and usage prevalent in this state for the business that is the subject of the relationship between the parties shall control.

(3) All commissions that are due at the time of termination of a contract between a sales representative and principal shall be paid within fourteen (14) days after the date of termination. Commissions that become due after the termination date shall be paid within fourteen (14) days after the date on which the commissions become due.

(c) When the contract between a sales representative and a principal is terminated and the contract was not reduced to writing, all commissions due shall be paid within fourteen (14) days of termination.

(d) A principal who, acting in bad faith, fails to comply with the provisions of subsection (c) concerning timely payment may be liable in a civil action for exemplary damages in an amount which does not exceed treble the amount of the commissions owed to the sales representative. Additionally, such principal shall pay the sales representative's reasonable attorney's fees and court costs. If the court determines that an action to collect such exemplary damages has been brought on frivolous grounds, reasonable attorney's fees and court costs shall be awarded to the principal.

(e) A principal who is not a resident of this state and who enters into a contract subject to this chapter is considered to be doing business in this state for purposes of the exercise of personal jurisdiction over the principal.

(f) A provision of this chapter may not be waived, whether by express waiver or by attempt to make a contract or agreement subject to the laws of another state. A waiver of a provision of this chapter is void.

(g) This chapter does not invalidate or restrict any other right or remedy available to a sales representative or preclude a sales representative from seeking to recover in one (1) action on all claims against a principal.

[Acts 1984, ch. 750, §§ 1-4; 1996, ch. 955, §§ 1-4.]

T.C.A. § 47-50-114

TN ST § 47-50-114

END OF DOCUMENT

ADDENDUM 15 - 820 ILCS 120/0.01-3

Formerly cited as IL ST CH 48 ¶ 2250

WEST'S SMITH-HURD ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 820. EMPLOYMENT
WAGES AND HOURS
ACT 120. SALES REPRESENTATIVE ACT

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Current through P.A. 92-85, apv. 7/12/2001

120/0.01. Short title

§ 0.01. Short title. This Act may be cited as the Sales Representative Act.

CREDIT(S)

1999 Main Volume

P.A. 84-627, § 0.01, added by P.A. 86-1324, § 474, eff. Sept. 6, 1990.

FORMER REVISED STATUTES CITATION

1999 Main Volume

Formerly Ill.Rev.Stat.1991, ch. 48, ¶ 2250.

HISTORICAL AND STATUTORY NOTES

Title of Act:

An Act relative to sales representatives. P.A. 84-627, approved Sept. 20, 1985, eff. Oct. 1, 1985.

820 I.L.C.S. 120/0.01

IL ST CH 820 § 120/0.01

END OF DOCUMENT

Formerly cited as IL ST CH 48 ¶ 2251

**WEST'S SMITH-HURD ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 820. EMPLOYMENT
WAGES AND HOURS**

ACT 120. SALES REPRESENTATIVE ACT

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Current through P.A. 92-85, apv. 7/12/2001

120/1. Definitions

§ 1. As used in this Act: (1) "Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the dollar amount of orders or sales or as a percentage of the dollar amount of profits.

(2) When a commission becomes due shall be determined in the following manner:

(A) The terms of the contract between the principal and salesperson shall control;

(B) If there is no contract, or if the terms of the contract do not provide when the commission becomes due, or the terms are ambiguous or unclear, the past practice used by the parties shall control;

(C) If neither (A) nor (B) can be used to clearly ascertain when the commission becomes due, the custom and usage prevalent in this State for the parties' particular industry shall control.

(3) "Principal" means a sole proprietorship, partnership, corporation or other business entity whether or not it has a permanent or fixed place of business in this State and which:

(A) Manufactures, produces, imports, or distributes a product for sale;

(B) Contracts with a sales representative to solicit orders for the product; and

(C) Compensates the sales representative, in whole or in part, by commission.

(4) "Sales representative" means a person who contracts with a principal to solicit orders and who is compensated, in whole or in part, by commission, but shall not include one who places orders or purchases for his own account for resale or one who qualifies as an employee of the principal pursuant to the Illinois Wage Payment and Collection Act [FN1].

CREDIT(S)

1999 Main Volume

P.A. 84-627, § 1, eff. Oct. 1, 1985. Amended by P.A. 86-586, § 1, eff. Jan. 1, 1990; P.A. 87-948, § 1, eff. Jan. 1, 1993.

FORMER REVISED STATUTES CITATION

1999 Main Volume

Formerly Ill.Rev.Stat.1991, ch. 48, ¶ 2251.

[FN1] 820 ILCS 115/1 et seq.

HISTORICAL AND STATUTORY NOTES

P.A. 86-586, in subpar. (4) relating to the definition of "sales representative", deleted "within this State" following "solicit wholesale orders".

P.A. 87-948, in the definition of "principal", in cl. (A), substituted "sale" for "wholesale"; and in the definition of "sales representative", deleted "wholesale" preceding "orders" and "or one who sells products to the ultimate consumer" from the end.

820 I.L.C.S. 120/1

IL ST CH 820 § 120/1

END OF DOCUMENT

Formerly cited as IL ST CH 48 ¶ 2252

WEST'S SMITH-HURD ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 820. EMPLOYMENT
WAGES AND HOURS
ACT 120. SALES REPRESENTATIVE ACT

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Current through P.A. 92-85, apv. 7/12/2001

120/2. Commissions

§ 2. All commissions due at the time of termination of a contract between a sales representative and principal shall be paid within 13 days of termination, and commissions that become due after termination shall be paid within 13 days of the date on which such commissions become due. Any provision in any contract between a sales representative and principal purporting to waive any of the provisions of this Act shall be void.

CREDIT(S)

1999 Main Volume

P.A. 84-627, § 2, eff. Oct. 1, 1985.

FORMER REVISED STATUTES CITATION

1999 Main Volume

Formerly Ill.Rev.Stat.1991, ch. 48, ¶ 2252.

820 I.L.C.S. 120/2

IL ST CH 820 § 120/2

END OF DOCUMENT

Formerly cited as IL ST CH 48 ¶ 2253

WEST'S SMITH-HURD ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 820. EMPLOYMENT
WAGES AND HOURS
ACT 120. SALES REPRESENTATIVE ACT

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Current through P.A. 92-85, apv. 7/12/2001

120/3. Liability of principal

§ 3. A principal who fails to comply with the provisions of Section 2 concerning timely payment or with any contractual provision concerning timely payment of commissions due upon the termination of the contract with the sales representative, shall be liable in a civil action for exemplary damages in an amount which does not exceed 3 times the amount of the commissions owed to the sales representative. Additionally, such principal shall pay the sales representative's reasonable attorney's fees and court costs.

CREDIT(S)

1999 Main Volume

P.A. 84-627, § 3, eff. Oct. 1, 1985.

FORMER REVISED STATUTES CITATION

1999 Main Volume

Formerly Ill.Rev.Stat.1991, ch. 48, ¶ 2253.

820 I.L.C.S. 120/3

IL ST CH 820 § 120/3

END OF DOCUMENT

PUBLIC AND LOCAL ACTS

OF

THE LEGISLATURE

OF THE

STATE OF MICHIGAN

PASSED AT THE REGULAR SESSION OF 1991

**Also Other Matters Required By Law
To Be Published With The Public Acts**



**Compiled And Published By The
LEGISLATIVE SERVICE BUREAU**

**Under The Direction Of The
LEGISLATIVE COUNCIL**

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As Governor, I have an obligation to ensure that the site chosen is one which pays proper tribute to those who died or who are listed as missing in action as a result of their service in the Vietnam War. I also feel that this memorial should be located in an area which would allow for future expansion to accommodate a tribute to Michigan Veterans from all wars. That is why I have instructed my staff to work with the commission, and continue searching, until a suitable site is located—one which meets our highest standards and those established by law.

For these reasons, I am returning Enrolled House Bill 4730 without signature.

Sincerely,
JOHN ENGLER
Governor

Compiler's note: Enrolled House Bill No. 4730, referred to above, is compiled in *Michigan House Enrolled Bills (1991)*.

July 15, 1991

Michigan Senate
State Capitol
Lansing, MI 48909

Ladies and Gentlemen:

Today I have vetoed and am returning to you Enrolled Senate Bill 36 for your reconsideration.

While I acknowledge that this legislation addresses an indefensible business practice, my veto is based on several considerations.

First, I consider it unwise to create a statutory cause of action designed to benefit a particular business relationship that already has access to a judicial remedy through the principles of general contract law. Where creation of a cause of action is defensible, I believe it should be created in the Revised Judicature Act in order to provide reasonable notice to the public.

Second, I oppose the use of exemplary damages in contract actions absent broad public policy considerations and particularly in this case where exemplary damages would be assessed without consideration of the underlying factors resulting in breach of contract.

Finally, while I support the award of reasonable attorney fees and costs to the prevailing party, Senate Bill 36 fails to define prevailing party. Furthermore, I believe that an award of reasonable attorney fees and costs to the prevailing party should be permitted in all civil actions and should not be established on a case by case basis.

For these reasons, I am returning Enrolled Senate Bill 36 without signature.

Sincerely,
JOHN ENGLER
Governor

Compiler's note: Enrolled Senate Bill No. 36, referred to above, is compiled in *Michigan Senate Enrolled Bills (1991)*.

TABLE OF CONTENTS

INDEX OF AUTHORITIES

.....	iv
JURISDICTIONAL STATEMENT	1
COUNTER-STATEMENT OF QUESTIONS INVOLVED	2
COUNTER-STATEMENT OF FACTS	3
Introduction	3
The Parties and Their Agreement	4
CBI Fails to Pay the Commissions Earned by Henes on Several Sales	5
Henes Files a Lawsuit Against CBI to Recover Unpaid Sales Commissions	9
CBI's President Admits That CBI Intentionally Withheld Sales Commissions from Henes	9
The Trial Court Reads the Jury an Instruction That Mirrors the Language of the SRCA	10
The Jury Finds That Henes Is Entitled to All of the Commissions it Claimed Were Due and That CBI Intentionally Failed to Pay the Commissions on Three of the Four Transactions at Issue	13
The Judgment and the Post-Judgment Motions	13
CBI Appeals the Jury Instruction Issue, but Does Not Appeal the Jury's Determination That Commissions Are Owed to Henes	15
SUMMARY OF ARGUMENT	16
ARGUMENT	16
I. The Express Language of the Michigan Sales Representatives Commission Act Indicates That Penalty Damages Should Be Imposed Whenever a Principal "Intentionally" Fails to Pay Commissions	16

II.	Examination of the Sales Representative Acts in Other States Further Demonstrates That the Michigan Legislature Did Not Intend to Include a Bad Faith Element in the SRCA	26
III.	Cases Decided Under Other Michigan Statutes Are Not Instructive for the Same Reasons That Cases Decided under the Sales Commission Acts of Other States Are Not Instructive	31
IV.	The Iowa Supreme Court Cases Cited by CBI Are Not Instructive Because the Iowa Supreme Court Did Not Apply the Rules of Statutory Construction That Are Typically Applied by Michigan Courts	35
V.	CBI's Arguments Based on the "Legislative History" of the SRCA Are Flawed	36
CONCLUSION AND RELIEF REQUESTED		39
ADDENDUM 1	MCL 600.2961	
ADDENDUM 2	<i>Webster's New World Dictionary</i> (3d College ed. 1988) - Definition of "Intentional"	
ADDENDUM 3	<i>Webster's II New Riverside University Dictionary</i> (1984) - Definition of "Intentional"	
ADDENDUM 4	<i>Webster's New Twentieth Century Dictionary Unabridged</i> (2d ed. 1978) - Definitions of "Intentional" and "Intentionally"	
ADDENDUM 5	<i>Black's Law Dictionary</i> - Definition of "Intentionally"	
ADDENDUM 6	<i>Black's Law Dictionary</i> - Definition of "Bad Faith"	
ADDENDUM 7	MCL 30.411	
ADDENDUM 8	MCL 691.1557a	
ADDENDUM 9	MCL 442.365	
ADDENDUM 10	MCL 445.1905	
ADDENDUM 11	MCL 600.2919	

ADDENDUM 12	Model Sales Representative Act
ADDENDUM 13	Ind. Code Ann. § 24-4-7-5
ADDENDUM 14	Tenn. Code Ann. § 47-50-114
ADDENDUM 15	820 ILCS 120/0.01-3
ADDENDUM 16	Governor Engler's 7/15/91 Veto Letter

INDEX OF AUTHORITIES

Cases

<i>Baumier v Antiau</i> , 65 Mich 31; 31 NW 888 (1887)	31, 32
<i>Bradley v Board of Education</i> , 455 Mich 285; 565 NW2d 650 (1997)	33
<i>Condon Auto Sales & Service Inc v Crick</i> , 604 NW2d 587, 598 (Iowa 1999)	35, 36
<i>Crowe v Detroit</i> , 465 Mich 1; 631 NW2d 293 (2001)	16, 17
<i>DiBenedetto v West Shore Hospital</i> , 461 Mich 394; 605 NW2d 300 (2000)	25
<i>Frank W Lynch & Co v Flex Technologies Inc</i> , 463 Mich 578; 624 NW2d 180 (2001) ...	16, 24, 36, 37
<i>Halverson v Lincoln Commodities Inc</i> , 297 NW2d 518 (Iowa 1980)	35, 36
<i>Heath v Alma Plastics Co</i> , 121 Mich App 137; 328 NW2d 598 (1982)	33, 34
<i>Helder v Sruba</i> , 462 Mich 92; 611 NW2d 309 (2000)	16, 17, 19, 25, 36
<i>Kenneth Henes Special Projects v Continental Biomass Industries</i> , 86 F Supp 2d 721 (ED Mich 2000)	11
<i>Lesner v Liquid Disposal Inc</i> , 466 Mich 95; 643 NW2d 553 (2002)	16, 17, 36
<i>Maher & Associates Inc v Quality Cabinets</i> , 640 NE2d 1000 (Ill App 1994)	30, 31
<i>Massey v Mandell</i> , 462 Mich 375; 614 NW2d 70 (2000)	16, 23
<i>McPeak v McPeak</i> , 233 Mich App 483; 593 NW2d 180 (1999)	33
<i>Nummer v Treasury Dept</i> , 448 Mich 534; 533 NW2d 250 (1995)	26, 28
<i>Peisner v Detroit Free Press</i> , 421 Mich 125; 364 NW2d 600 (1984)	32
<i>People v Herron</i> , 464 Mich 593; 628 NW2d 528 (2001)	19
<i>People v Stone</i> , 463 Mich 558; 621 NW2d 702 (2001)	19
<i>People v Vasquez</i> , 465 Mich 83; 631 NW2d 711 (2001)	16, 24

<i>People v Venticinque</i> , 459 Mich 90; 586 NW2d 732 (1998)	22
<i>Robinson v Detroit</i> , 462 Mich 439; 613 NW2d 307 (2000)	16, 22, 23
<i>Saginaw Firefighters Ass’n v Saginaw</i> , 137 Mich App 625; 357 NW2d 908 (1984)	33
<i>Sands Appliance Services v Wilson</i> , 463 Mich 231; 615 NW2d 241 (2000)	19
<i>Terry Barr Sales, LLC v Amcast Industrial Corp</i> , No. 99-40202, slip op. (ED Mich Jul. 24, 2000)	25
<i>Veselenak v Smith</i> , 414 Mich 567; 327 NW2d 261 (1982)	33
<i>Zavell & Associates Inc v CCA Industries Inc</i> , 628 NE2d 1050 (Ill App 1993)	30, 31

Statutes

820 ILCS 120/0.01-3	29
Cal. Civil Code § 1738.15	27
Ind. Code Ann. § 24-4-7-5(b)	27
Iowa Code Ann. §§ 91A.1-13	35
Kan. Stat. Ann. § 44-342(b)	27
Mass. Gen. Laws Ann. Ch. 104, § 9	27
MCL 30.411	22, 24
MCL 408.393	33, 34
MCL 442.365	22
MCL 445.1905	23
MCL 600.2911	32
MCL 600.2919	24

MCL 600.2961	3, 9, 18, 28
MCL 691.1557a	22
MCL 8.3a	18, 21
Pa. Stat. Ann. Title 43, § 1475(a)	27
Sales Representative Acts of 28 States	26
Tenn. Code Ann. § 47-50-114(d)	27

Court Rules

MCR 7.212	2
MCR 7.305	3, 15
MCR 7.306	2

Other Authority

<i>Black's Law Dictionary</i> (Abridged 6 th ed. 1991)	20
<i>Webster's II New Riverside University Dictionary</i> (1984)	19
<i>Webster's New Twentieth Century Dictionary - Unabridged</i> (2d ed. 1978)	20
<i>Webster's New World Dictionary</i> (3d College ed. 1988)	19

JURISDICTIONAL STATEMENT

Plaintiff-Appellee does not contest the jurisdictional summary set forth in Appellant's Brief.

**COUNTER-STATEMENT
OF QUESTIONS INVOLVED**

The question certified to this Court by the United States Court of Appeals for the Sixth Circuit is as follows:

What standard is appropriate in evaluating the
mental state required for double damages under the
Michigan Sales Representative Commission Act?

(Cert. to Mich. Supreme Court, p. 6, Apx. 255A).¹

Appellee objects to the entire “Statement of Certified Question” contained in Appellant’s Brief. Appellant’s “Statement of Certified Question” fails to concisely set forth the actual question certified by the United States Court of Appeals for the Sixth Circuit. It also misstates Appellee’s position concerning the certified question, and contains what is essentially a “Summary of Argument” concerning Appellant’s position. Accordingly, the “Statement of Certified Question” fails to conform with MCR 7.212(C)(5) and MCR 7.306(A).

¹Citations to “Apx. ____” indicate references to documents that are included in the Joint Appendix.

COUNTER-STATEMENT OF FACTS

Introduction.

This case involves a dispute over the penalty damages available under the Michigan Sales Representatives Commission Act, MCL 600.2961. Plaintiff-Appellee, Kenneth Henes Special Projects Procurement, Marketing and Consulting Corporation (hereinafter “Henes”), is a Michigan sales representative company that sued Defendant-Appellant, Continental Biomass Industries, Inc. (hereinafter “CBI”), to recover unpaid sales commissions and penalty damages under the SRCA.

During the jury trial in this matter, a dispute arose concerning the instructions to be given the jury regarding the penalty damages provision of the SRCA. Henes and CBI each proffered different instructions regarding the phrase “intentionally failed to pay”. The trial court refused to read either of the proposed instructions, and instead read the jury an instruction that “mirrored” the language of the Act.

The jury returned a verdict finding that Henes was entitled to all of the sales commissions it claimed, and specifically finding that CBI had intentionally failed to pay the commissions due on three of the four transactions at issue. After the trial court denied CBI’s motion for a new trial, CBI appealed to the United States Court of Appeals for the Sixth Circuit. That court subsequently certified the following question to this Court pursuant to MCR 7.305(B):

What standard is appropriate in evaluating the
mental state required for double damages under the
Michigan Sales Representative Commission Act?

(Cert. to Mich. Supreme Court, p. 6, Apx. 255A).

In its brief, CBI “recasts” the facts in this case in an attempt to minimize Henes’ efforts in procuring the sales that gave rise to the commissions at issue, and to make itself appear more sympathetic. It is important to note, however, that the jury unequivocally found that CBI was liable for the all of the sales commissions claimed by Henes, and CBI has not appealed that finding by the jury. It should also be noted that although more than three years have passed since the jury made its finding, CBI still has not paid the commissions that are owed to Henes.

The Parties and Their Agreement.

Kenneth Henes Special Projects Procurement, Marketing and Consulting Corporation is a Michigan-based sales representative company. (Amended Comp., ¶ 1, Apx. 28A; Answer, ¶ 1, Apx. 39A). Henes specializes in selling construction, environmental, and demolition waste processing equipment. (Amended Comp., ¶ 6, Apx. 28A). Henes is owned and operated by its President and sole-shareholder, Kenneth Henes, who has worked as a sales representative in Michigan for more than 35 years. *Id.*

CBI is a New Hampshire corporation that is owned and operated by its President, Anders Ragnarsson. (Amended Comp., ¶ 2, Apx. 28A; Answer, ¶ 2, Apx. 39A). CBI is a manufacturer of large grinding machines that are used to process trees and wood waste into mulch. (Amended Comp., ¶ 7, Apx. 29A; Answer, ¶ 7, Apx. 39A). Although its prices vary, CBI’s machines typically have a new selling price between \$500,000 and \$1.5 million. *Id.*

While the starting date of the relationship between the parties is uncertain, it is undisputed that by 1996 Henes and CBI entered into a sales representative agreement.

(Ragnarsson, TR. Vol. 3, p. 291, Apx. 96A).² Under the terms of the agreement, Henes was to act as CBI's exclusive sales representative in the Great Lakes Region, which consisted of Michigan, Ohio, Indiana, Illinois and Wisconsin. (Ragnarsson, TR. Vol. 3, pp. 296-297, Apx. 101A-102A). In exchange for the services provided, CBI agreed to pay Henes a 10% sales commission on any sales made to customers located within Henes' exclusive territory. (Ragnarsson, TR. Vol. 3, p. 297, Apx. 102A). It was also agreed that commissions would be negotiated on a case-by-case basis on sales that Henes was involved in, but which occurred outside of the exclusive territory. (Henes, TR. Vol. 2, pp. 90-92, Apx. 53A-55A).

CBI Fails to Pay the Commissions Earned by Henes on Several Sales.

Between 1996 and 1998, Henes was very successful in selling CBI's machinery. During that time there were several million dollars worth of sales made to various customers throughout Henes' exclusive territory. (Ragnarsson, TR. Vol. 3, pp. 292-297, Apx. 97A-102A). On virtually all of these sales, CBI paid Henes the full 10% sales commission agreed upon by the parties. (Ragnarsson, TR. Vol. 3, p. 297, Apx. 102A).

In 1998, however, tensions began to rise between the parties. The tensions primarily related to CBI's failure to pay Henes all of the commissions due on two separate sales made to a customer located in Chicago, Illinois, within Henes' territory. The first sale occurred in December 1996, and involved a large stationary grinder sold to Draw Leasing for \$583,000. (Henes, TR. Vol. 2, p. 95, Apx. 257B). Draw Leasing was one of several companies owned by

²Citations to to "TR. Vol. __, p. __" indicate volume and page references to the Trial Record.

the Ward family, which had purchased numerous CBI machines from Henes. (Henes, TR. Vol. 2, p. 94, Apx. 256B).

Although this sale was made by Henes to a customer located in its exclusive territory, CBI's President, Anders Ragnarsson, believed that Henes was only entitled to a portion of the normal sales commission because the machine was originally to be shipped outside of Henes' exclusive territory. (Henes, TR. Vol. 2, pp. 97-98, Apx. 258B-259B). Ragnarsson suggested a commission of 3%. *Id.* Henes, however, disagreed with Ragnarsson's interpretation of the agreement, and demanded the full 10% commission on the sale. (Henes, TR. Vol. 2, p. 99, Apx. 260B). Later, a compromise was reached, and Henes agreed to accept an 8% commission on the sale. (Henes, TR. Vol. 2, p. 105, Apx. 261B).

A dispute arose when CBI later attempted to impose several conditions on the payment of a portion of the 8% commission. (Henes, TR. Vol. 2, pp. 106-107, Apx. 262B-263B). CBI wished to pay Henes 5% when Draw Leasing paid CBI for the machine, and to pay the remaining 3% when a machine of similar value was "placed" outside of Henes' territory. *Id.* Henes eventually gave in and agreed to this condition. *Id.* CBI later paid the initial 5%, but failed to pay the remaining 3%, despite the fact that machines of similar value had been "placed" outside of Henes' territory. (Henes, TR. Vol. 2, p. 108, Apx. 264B).

A similar dispute also arose with regard to a mobile grinding machine that Henes sold to Draw Leasing for \$350,000 in June 1997. Henes' President, Ken Henes, procured the order for the mobile grinding machine from George Ward in Chicago, Illinois. (Henes, TR. Vol. 2, pp. 124-127, Apx. 265B-268B). The machine was first invoiced to Mr. Ward's company, Suburban Warehouse in Riverdale, Illinois, and was then re-invoiced to Draw Leasing in Chicago. (Henes,

TR. Vol. 2, p. 128, Apx. 269B). Because the machine was originally to be shipped to Georgia, however, CBI refused to pay Henes the \$35,000 sales commission due on the transaction. (Henes, TR. Vol. 2, pp. 127-128, Apx. 268B-269B).

The relationship between Henes and CBI became even more strained in late 1997 and early 1998, after CBI notified Henes that it would be setting up a dealer network and removing the sale of mobile grinding machines from Henes' responsibilities. (Henes, TR. Vol. 2, pp. 137-138, Apx. 272B-273B). Henes objected to several proposals for the phase-out of commissions relating to the mobile grinders. (Henes, TR. Vol. 2, pp. 139, 142, Apx. 274B, 276B). In October 1997, CBI sent Henes a proposal which indicated that if CBI found a dealer for any portion of Henes' assigned territory, CBI would give Henes 30 days notice to close any pending sales from that region. (Henes, TR. Vol. 2, pp. 141-142, Apx. 275B-276B). During the time period relevant to this lawsuit, however, CBI never appointed any dealers in Henes' exclusive territory (or anywhere else in the United States). *Id.* Thus, the 30 day notice was never given, and Henes continued to sell mobile grinders. *Id.*

In September 1997, Henes submitted a proposal for the sale of a mobile grinder to Midwest Forestry Products, a potential customer located in Prairieville, Illinois, within Henes' exclusive territory. (Henes, TR. Vol. 2, p. 134, Apx. 270B). Although Midwest Forestry did not purchase the mobile machine at that time, Mr. Henes maintained contact with its President, Steve Berglund, for several months thereafter. (Henes, TR. Vol. 2, pp. 136-137, Apx. 271B-272B). Then, in April 1998, Berglund contacted CBI directly, and within weeks, purchased a mobile grinding machine that was virtually identical to the machine that had been quoted by Henes. (Henes, TR. Vol. 2, pp. 154-157, Apx. 277B-280B). The order for the machine was

signed on May 7, 1998, and the customer's initial deposit was received by CBI on May 14, 1998.

Id.

On May 19, 1998, CBI notified Henes that it was terminating the relationship between the parties effective May 20, 1998. (Amended Comp., ¶ 16, Apx. 30A; Answer, ¶ 16, Apx. 40A).

Although the Midwest Forest Products sale was to a customer located in Henes' exclusive territory, and it occurred prior to the termination, CBI failed to pay any sales commissions to Henes on the sale. (Henes, TR. Vol. 2, p. 158, Apx. 281B). The total sales commission due on this sale was \$50,200. *Id.*

On May 21, 1998, the day after the termination, CBI also concluded an additional sale that Henes had been instrumental in procuring. This was the sale of a stationary grinder to Mega City Recycling, near Toronto, Ontario. (Henes, TR. Vol. 2, pp. 164-165, Apx. 287B-288B). Although Canada was not a part of Henes' exclusive territory, CBI had agreed to pay Henes commissions on a case-by-case basis for sales it procured from customers outside of its territory. (Henes, TR. Vol. 2, pp. 90-92, Apx. 53A-55A). Mr. Henes had played a significant role in introducing Mega City's President, Lawrence Herman, to CBI and its products. (Henes, TR. Vol. 2, pp. 159-164, Apx. 282B-287B). Henes provided literature and video tapes to Herman, and pre-qualified Mega City as a viable potential customer. *Id.* On May 21, 1998, Mega City purchased a CBI stationary grinder for \$375,000. Despite Henes' role in procuring this sale, however, CBI refused to pay any commissions on the sale. (Henes, TR. Vol. 2, p. 165, Apx. 288B).

Henes Files a Lawsuit Against CBI to Recover Unpaid Sales Commissions.

On June 2, 1998, Henes filed a lawsuit in the Wayne County (Michigan) Circuit Court. (Complaint, Apx. 19A-25A). The original Complaint included two counts. *Id.* In Count I, Henes set forth a breach of contract claim, seeking damages for unpaid sales commissions on the two Chicago transactions. *Id.* In Count II, Henes requested a declaratory judgment with regard to any other commissionable transactions that were completed after the termination. *Id.* Discovery soon revealed that CBI had sold the two additional machines to Henes' customers, Midwest Forestry and Mega City Recycling, within the days immediately surrounding the termination.

On July 14, 1998, CBI removed the case to the United States District Court for the Eastern District of Michigan. (USDC Docket Entries, p. 2, Apx. 10A). Thereafter, Henes was granted leave to file its First Amended Complaint, which included an additional count seeking damages under the Michigan Sales Representatives Commission Act, MCL 600.2961 (hereinafter "the Act" or "the SRCA"). (Amended Comp., Apx. 27A-35A). In the new count, Henes alleged that CBI had intentionally failed to pay the commissions due within the time limits prescribed by the Act. *Id.*

CBI's President Admits That CBI Intentionally Withheld Sales Commissions from Henes.

In the U.S. District Court, the case proceeded to a jury trial, which was conducted between June 16, 1999 and June 23, 1999. (Docket Entries, pp. 6-7, Apx. 14A-15A). During the trial, CBI's President, Anders Ragnarsson, acknowledged that CBI had intentionally withheld the sales commissions Henes claimed were due:

Q. (By Mr. Gillary) Now we've talked about four different transactions where we have commissions in dispute.

And that's the Draw stationary system[,] the Draw Road Mill, the Midwest Forestry [sic] Mobile Unit[,] and Mega City used unit.

You would agree with me that it was your decision not to pay those commissions on those units, correct?

A. (By Mr. Ragnarsson) That is correct.

....

Q. Would you also agree that the decision not to pay those commissions was knowingly and voluntarily made[?]
Nobody force[d you] not pay those commissions . . .
for example?

A. That's correct.

Q. And it was your specific intention not to pay those commissions, correct?

A. That is correct.

(Ragnarsson, TR. Vol. 3, pp. 339-340, Apx. 118A-119A).

The Trial Court Reads the Jury an Instruction That Mirrors the Language of the SRCA.

On June 22, 1999, before closing arguments were presented, the parties discussed the proposed jury instructions with the trial court. (TR. Vol. 4, pp. 437-441, Apx. 152A-156A).

When the instruction concerning the SRCA came up, CBI requested the trial court to include the following sentence purporting to define the phrase "intentional failure to pay":

Intentional failure to pay means that Defendant
knew a commission was due to the Plaintiff and
chose not to pay it.

(Opinion and Order, p. 20, Apx. 228A).³ Counsel for Henes objected to the inclusion of this definition, and the trial court declined to read it to the jury.⁴ (TR. Vol. 4, pp. 437-438, Apx. 152A-153A). Instead, the trial court decided to read the jury an instruction that “mirrored” the language of the SRCA. (Opinion and Order, p. 19, Apx. 227A).

When counsel for the respective parties presented their closing arguments, CBI’s counsel essentially ignored the trial court’s ruling, and instructed the jury that they should not find that CBI had intentionally failed to pay the commissions merely because it refused to pay the commissions until a jury had determined that they were due:

Mr. Burnard: . . . A word on intentional. We have a law in the state that penalize[s] . . . [c]ompanies who don’t pay commissions, what they should be paying[.]

Commissions are like wages. If they don’t pay wages you got coming, you ought to get penalized, nobody quarrels with that, but it’s not just that simple.

You have to make a determination as to whether the failure by Mr. Ragnarsson to pay these commissions was intentional or not. Unfortunately, you’re not going – intentional is not defined by that statute. You’re going to have use your own best judgment.

. . . .

I think in your common sense judgment, you’re looking as *if you should find that a commission is due on something, you should determine that Mr. Ragnarsson’s refusal to pay before it’s determined by a jury that something’s due was a perfectly legitimate business thing to do.* He had good reason for it, and it was not an intentional act to harm somebody to jip [sic] him out of his pay.

³The “Opinion and Order” cited here is the Opinion and Order Regarding (1) Defendant’s Motion for New Trial and Amendment of Judgment; (2) Plaintiff’s Motion for Amendment of Judgment; and (3) Plaintiff’s Motion for Attorneys’ Fees. The Opinion and Order has been published. See *Kenneth Henes Special Projects v Continental Biomass Industries*, 86 F Supp 2d 721 (ED Mich 2000).

⁴The trial court also declined Henes’ request to include a definition of the term “intentionally” taken from Black’s Law Dictionary.

You won't get much guidance on how to deal with that, but I'm suggesting to you that's the background of the statute. I think your common sense should prevail on that point.

(TR. Vol.4, pp. 494-495, Apx. 159A-160A) (emphasis added). Henes' counsel, on the other hand, merely urged the jury to use its "common sense on what intentional means." (TR. Vol. 4, p. 498, Apx. 161A).

Thereafter, the trial court provided the following instruction to the jury with regard to the SRCA:

Intentional Failure to Pay

Under the Michigan Sales Representative's Commission Act, MCL 600.2961; MSA 27A.2961, a principal is required to pay all of the commissions due to a terminated sales representative within 45 days after termination, and to pay any commissions which become due after termination within 45 days after such commissions become due. If a principal is found to have intentionally failed to pay the commissions when due, the principal is liable for the overdue commissions, and for an additional amount equal to two times the overdue commissions, or \$100,000.00, whichever is less.

I instruct you that Defendant, Continental Biomass Industries, Inc., is a principal as defined by the Sales Representative's Commission Act. I further instruct you that the Plaintiff, Kenneth Henes Special Projects Procurement, Marketing and Consulting Corporation, is a sales representative as defined by the Sales Representative's Commission Act.

If you find that Defendant has failed to pay a commission owed to Plaintiff, you are to determine whether Defendant intentionally failed to pay such commission when it was due.

(Opinion and Order, p. 19, Apx. 227A).

The jury was also provided a verdict form in which it was asked to determine the amount of commissions due, if any, with regard to each of the four transactions at issue, and to

determine whether CBI intentionally failed to pay the commissions due on each individual transaction within the time limits prescribed by the SRCA. (Verdict Form, Apx. 205A-207A).

The Jury Finds That Henes Is Entitled to All of the Commissions it Claimed Were Due and That CBI Intentionally Failed to Pay the Commissions on Three of the Four Transactions at Issue.

On June 23, 1999, after approximately nine hours of deliberations, the jury returned its verdict. (USDC Docket Entries, p. 7, Apx. 15A). The jury found that CBI was liable to Henes for all of the sales commissions that Henes claimed were due. (Verdict Form, Apx. 205A-207A). The jury also found that CBI had intentionally failed to pay the commissions due to Henes with regard to three of the four transactions at issue. *Id.*

The Judgment and the Post-Judgment Motions.

On June 30, 1999, the trial court entered a judgment in favor Henes, based on the jury's verdict, in the amount of \$257,493. (Judgment, Apx. 208A). Shortly thereafter, CBI filed a Motion for New Trial and Amendment of Judgment. (USDC Docket Entries, p. 7, Apx. 15A). Among other things, CBI argued that the trial court erred by failing to read CBI's proposed instruction defining "intentional failure to pay" to the jury. (Opinion and Order, p. 19, Apx. 227A). CBI also objected to the trial court's calculation of the verdict amount. (Opinion and Order, p. 26, Apx. 234A).

Henes also filed two post-judgment motions. Henes filed a Motion for Attorney Fees, seeking to recover its reasonable attorney fees under the SRCA. (USDC Docket Entries, p. 7, Apx. 15A). Henes also filed a Motion for Amendment of Judgment, in which it objected to the

trial court's calculation of the verdict amount and the trial court's failure to include interest in the judgment. *Id.*

On February 10, 2000, the trial court entered an Opinion and Order addressing the post-judgment motions. (Opinion and Order, Apx. 209A-248A). In the Opinion and Order, the trial court rejected CBI's arguments concerning the jury instructions on the "intentional failure to pay" issue. In doing so, the trial court:

- rejected CBI's argument that the Michigan Senate Fiscal Agency's Bill Analysis for the SRCA indicated a legislative intent that some element of "bad faith" must be shown before penalty damages may be awarded under the SRCA; (Opinion and Order, pp. 21-23, Apx. 229A-231A).
- rejected CBI's argument that Michigan courts had read a "bad faith" requirement into certain other Michigan statutes that include provisions for treble damages; (Opinion and Order, pp. 23-24, Apx. 231A-232A).
- held that Michigan courts have routinely equated the term "willful" with the term "intentional"; (Opinion and Order, pp. 24-25, Apx. 232A-233A), and
- held that since the accepted definition of the term "intentional" equated it with the terms "willful and voluntary", the jury instructions given by the court adequately instructed the jury, even without CBI's proposed definition of "intentional failure to pay". (Opinion and Order, p. 25, Apx. 233A).

As a result, CBI's motion for a new trial was denied. In addition, the trial court recalculated the amount of the verdict, and granted Henes' request for attorney fees and interest. (Opinion and Order, pp. 39-40, Apx. 247A-248A).

CBI Appeals the Jury Instruction Issue, but Does Not Appeal the Jury's Determination That Commissions Are Owed to Henes.

On March 6, 2000, CBI filed a claim of appeal. (USDC Docket Entries, p. 8, Apx. 16A). Among other things, CBI appealed the trial court's decision regarding the jury instructions relating to the SRCA. CBI essentially argued that the instructions failed to adequately instruct the jury as to the meaning of "intentional failure to pay". (Cert. to Mich. Supreme Court, p. 1, Apx. 250A). CBI did not appeal the jury's determination that Henes was entitled to all of the commissions it claimed were due. *Id.* (It should also be noted that although CBI has not appealed the jury's determination that commissions are owed to Henes, CBI still has not paid the commissions that are due to Henes).⁵

After oral arguments were presented on appeal, the United States Court of Appeals for the Sixth Circuit certified the following question to this Court pursuant to MCR 7.305(B):

What standard is appropriate in evaluating the
mental state required for double damages under the
Michigan Sales Representative Commission Act?

(Cert. to Mich. Supreme Court, p. 6, Apx. 255A).

⁵More than three years have passed since the jury determined that CBI was liable for the sales commissions claimed by Henes. Although CBI posted a supersedeas bond on October 18, 2000, more than one year after the jury determined that it was liable to Henes, it has not paid Henes the commissions which are now undisputably overdue.

SUMMARY OF ARGUMENT

The real issue in this certified question is whether the Michigan Sales Representatives Commission Act should be enforced pursuant to its express terms as written by the Legislature, with penalty damages awarded whenever a principal intentionally fails to pay sales commissions, or whether the Michigan Supreme Court should effectively re-write the statute by reading into it an elevated “bad faith” threshold of conduct when such a threshold was not expressly included by the Legislature. It is Henes’ position that reading a “bad faith” requirement into the Act is contrary Michigan law governing statutory interpretation, including numerous recent decisions by this Court. The Court would be legislating from the bench and making policy decisions that should be left to the Legislature if it were to interpret the Act in such a manner. In short, Henes contends that the SRCA should be enforced in accordance with the clear meaning of its express terms.

ARGUMENT

I. The Express Language of the Michigan Sales Representatives Commission Act Indicates That Penalty Damages Should Be Imposed Whenever a Principal “Intentionally” Fails to Pay Commissions.

In recent years, this Court has rendered a number of decisions in a wide variety of cases involving questions of statutory construction. *See, e.g., Lesner v Liquid Disposal Inc*, 466 Mich 95; 643 NW2d 553 (2002); *People v Vasquez*, 465 Mich 83; 631 NW2d 711 (2001); *Crowe v Detroit*, 465 Mich 1; 631 NW2d 293 (2001); *Frank W Lynch & Co v Flex Technologies Inc*, 463 Mich 578; 624 NW2d 180 (2001); *Robinson v Detroit*, 462 Mich 439; 613 NW2d 307 (2000); *Massey v Mandell*, 462 Mich 375; 614 NW2d 70 (2000); and, *Helder v Sruba*, 462 Mich 92; 611

NW2d 309 (2000). When these decisions (as well as a number of other recent decisions) are examined, it becomes evident that the Court regularly applies a uniform set of rules to questions involving statutory interpretation.

The “cardinal rule” of statutory construction is to identify and give effect to the intent of the Legislature. The first step in discerning intent is to examine the language of the statute. The language is to be read according to its ordinary and generally accepted meaning. Judicial construction is authorized only where the statute lends itself to more than one interpretation. When statutory language is clear and unambiguous, the court must honor the legislative intent as clearly indicated in that language and no further construction is required or permitted. Therefore, where the statute is clear on its face, “the role of the judiciary is not to articulate its view of ‘policy,’ but to apply the statute in accord with its plain language.”

Helder v Sruba, supra at 99 (citations omitted).

As noted in *Lesner, supra*, when engaging in statutory construction, the Court generally will not add provisions to a statute that were not included by the Legislature:

As we have indicated with great frequency, our duty is to apply the language of the statute as enacted, without addition, subtraction, or modification. We may not read anything into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. In other words, the role of the judiciary is not to engage in legislation.

Lesner v Liquid Disposal, supra at 101-102 (citations omitted).

With these rules in mind, the first step to be taken by the Court is to examine the express language of the SRCA. *Helder, supra* at 99. The words of a statute provide the most reliable evidence of the Legislature’s intent. *Crowe, supra* at 6. The penalty damages provisions of the SRCA, set forth in subsections (4) and (5) of the Act, provide as follows:

(4) All commissions that are due at the time of termination of a contract between a sales representative and principal shall be

paid within 45 days after the date of termination. Commissions that become due after the termination date shall be paid within 45 days after the date on which the commission became due.

(5) A principal who fails to comply with this section is liable to the sales representative for both of the following:

(a) Actual damages caused by the failure to pay the commissions when due.

(b) If the principal is found to have intentionally failed to pay the commission when due, an amount equal to 2 times the amount of commissions due but not paid as required by this section or \$100,000.00, whichever is less.⁶

From the express language of the Act, it can be seen that the Michigan Legislature has specifically identified the level to which a principal's conduct must rise before penalty damages may be awarded under the SRCA. According to the express language of the Act, penalty damages should be awarded whenever a principal "intentionally" fails to pay sales commissions within the prescribed time limits.

The next step in the interpretation of the SRCA is to determine the meaning of the word "intentionally". In MCL 8.3a, the Michigan Legislature provides the following guidance to the Court in determining the meaning of words used in statutes:

All words and phrase shall be construed and understood according to the common and approved usage of the language, but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in law, shall be construed and understood according to such peculiar and appropriate meaning.

⁶A copy of the entire text of MCL 600.2961 is attached hereto as Addendum 1.

This Court has also recognized on numerous occasions that the language of a statute is to be read according to its ordinary and generally accepted meaning. *Helder, supra*; also see *Massey v Mandell, supra* at 380; *People v Herron*, 464 Mich 593, 611; 628 NW2d 528 (2001).

When attempting to discern the meaning of words or phrases that are not defined in a statute, the Court may resort to dictionary definitions. *People v Stone*, 463 Mich 558, 563; 621 NW2d 702 (2001).

Where the Legislature has not expressly defined the terms used in a statute, [the] Court may turn to dictionary definitions “to aid [its] goal of construing those terms in accordance with their ordinary and generally accepted meanings.” In interpreting the language of a statute it is appropriate to consult a lay dictionary when defining common words or phrases that have not acquired a unique meaning at law. This is because the common and approved usage of a nonlegal term is most likely to be found in a standard dictionary, not in a legal dictionary.

Sands Appliance Services v Wilson, 463 Mich 231, 240-241; 615 NW2d 241 (2000).

The following are definitions of “intentional” and “intentionally” that appear in several “lay” dictionaries:

Webster’s New World Dictionary 703 (3d College ed. 1988):

intentional 1. having to do with intention or purpose. 2. done purposely; intended - SYN, voluntary⁷

Webster’s II New Riverside University Dictionary 635 (1984):

intentional 1. Deliberately done. 2. relating to logical intention or connotation⁸

⁷See Addendum 2.

⁸See Addendum 3.

Webster's New Twentieth Century Dictionary - Unabridged 955 (2d ed. 1978):

intentional 1. having to do with intention or purpose. 2. intended; designed; done with design or purpose; as, the act was *intentional*, not accidental.

intentionally by design; purposely; not casually.⁹

These “lay” definitions are virtually indistinguishable from the “legal” definition of “intentionally” that appears in Black’s Law Dictionary:

Intentionally. To do something purposely, and not accidentally or involuntarily. Person acts “intentionally” if he desires to cause consequences of his act or he believes consequences are substantially certain to result.

Black’s Law Dictionary 560 (Abridged 6th ed. 1991).¹⁰

When the preceding definitions are compared to the definition of “bad faith”, it becomes quite evident that a “bad faith” standard is not necessarily included within the meaning of “intentionally”. In fact, “bad faith” means something quite different from “intentionally”:

Bad faith. The opposite of “good faith,” generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one’s rights or duties, but by some interested or sinister motive. Term “bad faith” is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will.

Black’s Law Dictionary 94 (Abridged 6th ed. 1991).¹¹

⁹See Addendum 4.

¹⁰See Addendum 5.

¹¹See Addendum 6.

The legislative intent of the SRCA is clearly indicated by its express language. The Michigan Legislature expressly provided that penalty damages should be awarded whenever a principal “intentionally” fails to pay commissions within the prescribed time limits. Applying the ordinary and generally accepted meaning of the term “intentionally”, it is clear that the Legislature intended that penalty damages should be awarded whenever a principal “purposely” fails to pay commissions, and its failure to pay is neither “accidental” nor “involuntary”. Nothing in the express language of the Act indicates that bad faith must be proven before penalty damages will be awarded.

CBI attempts to create some confusion concerning the meaning of the word “intentionally” by pointing to a few selected cases from various jurisdictions in which appellate judges have allegedly “struggled” with the meaning of the term, primarily in the intentional tort context. The problem with CBI’s argument, however, is that it fails to demonstrate that the term “intentionally” has acquired any generally accepted alternative “technical” or “legal” definition. As MCL 8.3a makes clear, in the absence of such a technical or legal definition, a term must be construed and understood according to its common and approved usage. In this case, the word “intentionally” must be construed to mean “purposely, and not accidentally or involuntarily.”¹²

The Court must also presume that the Legislature used the word “intentionally” because it meant “intentionally”. When the language of a statute is clear and unambiguous, the Court must

¹²CBI’s contention that this definition would result in the imposition of penalty damages any time there is a nonpayment that is not the result of “a mere clerical mistake” is unfounded. There are any number of circumstances that could make nonpayment “accidental” or “involuntary” including: bankruptcy; clerical error; computer malfunction; accidental loss or destruction of the data necessary to calculate the commissions due; insolvency; payment lost in the mail; injunction or restraining order prohibiting payment; or, failure of the customer to provide the principal with the information necessary to calculate and pay the commissions due.

presume that the Legislature intended the meaning expressed by the language it used. *People v Venticinque*, 459 Mich 90, 99-100; 586 NW2d 732 (1998). “The Court may not assume that the Legislature inadvertently made use of one word or phrase instead of another.” *Robinson v Detroit*, *supra* at 459. Since the Legislature expressly provided that penalty damages will be available under the SRCA whenever a principal “intentionally” fails to pay, the Court must presume that the Legislature *meant* that penalty damages should be awarded whenever a principal “intentionally” fails to pay. The Court should honor the Legislature’s intent, as clearly indicated in the language of the SRCA, and should not add any further language or provisions to the Act under the guise of construction.

Also important in this analysis is the fact that the Legislature did not include an express bad faith requirement in the language of the SRCA. The Legislature has clearly demonstrated on a number of occasions that it knows how to include a bad faith provision in a statute if it intends to do so:

- Subsection (4) of MCL 30.411, a provision abrogating liability for personal injury or death caused by disaster relief workers, expressly excludes “cases of willful misconduct, gross negligence, or bad faith”;¹³
- MCL 691.1557a, a statute that generally exempts mediators from civil liability, retains liability for mediators who “acted in bad faith or with malicious purpose”;¹⁴
- MCL 442.365, a statute governing the sale of art, includes an express provision allowing a merchant to recover its

¹³See Addendum 7.

¹⁴See Addendum 8.

attorney fees when a purchaser brings an action “in bad faith”;¹⁵

- MCL 445.1905, a provision of the Uniform Trade Secrets Act, includes provisions allowing a court to award attorney fees when a claim of misappropriation is made “in bad faith”, or if a motion to terminate an injunction is made or resisted “in bad faith”.¹⁶

Because the Legislature has shown that it knows how to make clear its intention to include a bad faith requirement in a statute, the Court should not read such a provision into the SRCA when the Legislature has not expressly included one. *Massey v Mandell, supra* at 382; *Robinson v Detroit*,

¹⁵See Addendum 9.

¹⁶See Addendum 10.

supra at 460; *Frank W Lynch & Co v Flex Technologies Inc*, *supra* at 584; *People v Vasquez*, *supra* at 94-95.¹⁷

When CBI's argument is examined, it becomes apparent that it is really an argument based on policy considerations. CBI is essentially arguing that it would be bad public policy to impose penalty damages on a principal who intentionally withholds sales commissions for more than 45 days, unless the sales representative can demonstrate that the commissions were withheld in bad faith. As this Court has repeatedly recognized, however, "the role of the judiciary is not to

¹⁷The Sixth Circuit Court of Appeals has also advanced the notion of a "good faith" exception to the penalty damages provision of the SRCA. This notion contravenes Michigan law for the same reasons as CBI's "bad faith" argument. Nothing in the express language of the SRCA indicates that the Legislature intended to include a "good faith" exception. The Legislature has clearly demonstrated that it knows how to include a "good faith" exception to penalty damages in a statute if it intends to do so. For instance, MCL 600.2919, a statute that imposes treble damages on persons who cut down or remove timber from the land of another, provides in part as follows:

Sec. 2919. (1) **Treble and single damages.** Any person who:
(a) cuts down or carries off any wood, underwood, trees, or timber or despoils or injures any trees on another's lands . . . without the permission of the owner of the lands . . . is liable to the owner of the land . . . for 3 times the amount of actual damages. *If upon trial of an action under this provision or any other action for trespass on lands it appears that the trespass was casual and involuntary, or that the defendant had probable cause to believe that the land on which the trespass was committed was his own . . . judgment shall be given for the amount of single damages only.*

(Emphasis added) (A copy of the entire text of MCL 600.2919 is attached hereto as Addendum 11). As the highlighted language indicates, the Michigan Legislature knows how to include a "good faith" exception in a statute. Under the timber cutting statute, a trespasser may be held liable for treble damages unless he demonstrates the existence of a good faith belief that he was not trespassing, or that the trespass was accidental or negligent. Also see MCL 30.411(2) (included as Addendum 7), wherein the Legislature exempts disaster relief workers from certain liabilities when they are engaged in the "good faith" rendering of relief services.

articulate its view of ‘policy,’ but to apply the statute in accord with its plain language.” *Helder v Sruba*, *supra* at 99 (quoting *Rogers v Detroit*, 457 Mich 125, 140; 579 NW2d 840 (1998)). The Court must not “rewrite the plain statutory language and substitute [its] own policy decision for those already made by the Legislature.” *DiBenedetto v West Shore Hospital*, 461 Mich 394, 405; 605 NW2d 300 (2000). The Legislature did not include a “bad faith” requirement in the SRCA, and as a result, the Court should not read one into the Act.

The perils of opening the language of the SRCA to a policy driven interpretation are further highlighted by the language of the Sixth Circuit’s Certificate to the Michigan Supreme Court. As the Sixth Circuit notes, “There are several possible standards which could apply . . .”, ranging from the good faith standard applied to commercial transactions by the Uniform Commercial Code, to a common law good faith standard, to a bad faith standard. (Cert. to Mich. Supreme Court, pp. 4-5, Apx. 253A-254A). In choosing which, if any, of these “possible standards” was intended by the Legislature, the Court would essentially be legislating from the bench.¹⁸

¹⁸There are real differences between these possible standards. For instance, in *Terry Barr Sales, LLC v Amcast Industrial Corp*, a case currently on appeal in the United States Court of Appeals for the Sixth Circuit, the United States District Court for the Eastern District of Michigan held that the defendant principal was liable for penalty damages as a matter of law where the principal acknowledged that certain sales commissions were due, but failed to pay those commissions within 45 days after the acknowledged due date. *Terry Barr Sales, LLC v Amcast Industrial Corp*, No. 99-40202, slip op. at 9-14 (ED Mich Jul. 24, 2000). The defendant principal has appealed this ruling, arguing that penalty damages should not be imposed even though it failed to pay commissions it acknowledged were due, because it had not been proven that the principal acted in bad faith. This demonstrates the unfairness of the standard urged by CBI and by the defendant in *Terry Barr Sales*. Even though commissions that were admittedly due were withheld for more than 45 days, under the standard urged by CBI the sales representative would still have the burden of proving bad faith before receiving penalty damages.

II. Examination of the Sales Representative Acts in Other States Further Demonstrates That the Michigan Legislature Did Not Intend to Include a Bad Faith Element in the SRCA.

It is instructive to consider the sales representative acts that have been enacted in other states in order to put the SRCA in context. When the Legislature enacts a statute, it is presumed to do so with knowledge of and regard to existing laws concerning the same subject. *Nummer v Treasury Dept*, 448 Mich 534, 553; 533 NW2d 250 (1995). At the time the SRCA was enacted in 1992, there were similar statutes in effect in 28 other states.¹⁹ Like the SRCA, the acts in most of those states are essentially modified versions of a model act prepared by the Bureau of Wholesale Sales Representatives.²⁰ Although the various other acts are somewhat similar to the SRCA, they significantly differ from the Michigan Act in one material respect -- the Michigan Act specifically defines the level to which a principal's conduct must rise, i.e., "intentionally",

¹⁹These include: Alabama (Ala Code §§ 8-24-1 to -5, eff. 10/1/85), Arizona (Ariz Rev Stat Ann §§ 44-1798 to 1798.03, eff. 9/27/90), Arkansas (Ark Code Ann §§ 4-70-301 to -306, eff. 3/10/89), California (Cal Lab Code §§ 2751-2752, eff. 1/1/64; Cal Civ Code §§ 1738.10-17, eff. 1/1/91), Florida (Fla Stat § 686.201, eff. 10/1/84), Georgia (Ga Code Ann. §§ 10-1-700 to -704, eff. 7/1/86), Illinois (820 ILCS 120/0.01-3, eff. 10/1/85), Indiana (Ind Code §§ 24-4-7-1 to -8, eff. 9/1/85), Kansas (Kan Stat Ann. §§ 44-341 to -347, 7/1/87), Kentucky (Ky Rev Stat Ann §§ 371.370-.385, eff. 7/15/88), Louisiana (La Rev Stat Ann. §§ 51:441-445, eff. 7/18/88), Maine (Me Rev Stat Ann title 10, §§ 1341-1344, eff. 10/9/91), Maryland (Md Ann Code, Labor & Emp, §§ 3-601 to -607, eff. 7/1/88), Massachusetts (Mass Gen Laws Ann, Ch. 104, §§ 7-9, eff. 3/26/87), Minnesota (Minn Stat Ann § 181.145, eff. 8/1/84), Mississippi (Miss Code Ann §§ 75-87-1 to -7, eff. 7/1/88), Missouri (Mo Ann Stat §§ 407.911-915, eff. 8/28/89), New Hampshire (NH Rev Stat Ann §§ 339-E:1-6, eff. 1/1/90), New Jersey (NJ Stat Ann §§ 2A:61A-1 to -7, eff. 9/7/90), New York (NY Lab Law §§ 191-a to -c, eff. 1/1/88), North Carolina (NC Gen Stat §§ 66-190 to -193, eff. 10/1/89), Ohio (Ohio Rev Code Ann. § 1335.11 (Anderson 1996), eff. 9/9/88), Oklahoma (Okla Stat Ann, title 15, §§ 675-679, eff. 11/1/89), Pennsylvania (Pa Stat Ann, title 43, §§ 1471-1478, eff. 6/21/89), South Carolina (SC Code Ann §§ 39-65-10 to -80, eff. 5/2/88), Tennessee (Tenn Code Ann § 47-50-114, eff. 10/1/84), Texas (Tex Bus & Com Code Ann §§ 35.81-86, eff. 9/1/87), and Washington (Wash Rev Code Ann. §§ 49.48.150-190, eff. 6/11/92).

²⁰A copy of the model act is included here as Addendum 12.

before the penalty damages will be imposed. The vast majority of the acts in other states do not. Of the 28 acts in effect when the SRCA was enacted, only six specifically identify the level to which a principal's conduct must rise before penalty damages may be imposed.²¹ The standards identified in those acts are as follows:

<u>State</u>	<u>Standard</u>
California	willfully fails to pay ²²
Indiana	in bad faith fails to comply ²³
Kansas	knowingly fails to pay ²⁴
Massachusetts	willfully or knowingly fails to comply ²⁵
Pennsylvania	willfully fails to pay ²⁶
Tennessee	acting in bad faith, fails to comply ²⁷

It is important to note that the acts from Indiana and Tennessee, both of which were enacted prior to the SRCA, specifically include an element "bad faith". Because these acts were already in effect, it must be presumed that the Michigan Legislature was aware of them when it

²¹The vast majority of the acts from other states do not identify a specific level of conduct, but merely state that double or treble damages are available when a principal "fails to comply" with the act. See, e.g., Ala. Code § 8-24-3; Ariz. Rev. Stat. Ann. § 44-1798.02(B); Ark. Code Ann. § 4-70-306, etc.

²²Cal. Civil Code § 1738.15.

²³Ind. Code Ann. § 24-4-7-5(b). (See Addendum 13).

²⁴Kan. Stat. Ann. § 44-342(b).

²⁵Mass. Gen. Laws Ann. Ch. 104, § 9.

²⁶Pa. Stat. Ann. Title 43, § 1475(a).

²⁷Tenn. Code Ann. § 47-50-114(d). (See Addendum 14).

enacted the SRCA. *Nummer v Treasury Dept, supra*. Presuming that the Michigan Legislature was aware of these statutes, the fact that it did not adopt their “bad faith” requirement in the express language of the SRCA further demonstrates that it did not intend to require a showing of bad faith as a prerequisite for an award of penalty damages.

There is also a second significant way in which the SRCA differs from the sales representative acts from other states. *The SRCA is the only sales representative act in the country that places a fixed dollar cap on the penalty damages available.* The maximum penalty damages available under the SRCA is capped at \$100,000. MCL 600.2961(5)(b). Of the 28 other acts identified above, 15 allow a sales representative to recover treble damages with no dollar cap on the penalty damages available.²⁸ Massachusetts and South Carolina allow a sales representative to recover up to 4 times the amount of overdue commissions, with no dollar cap on penalty damages. Six other states allow sales representatives to recovery two times the amount of commissions due, with no fixed dollar cap on the penalty.²⁹

The SRCA’s \$100,000 cap on penalty damages represents a substantial limitation. For example, in the present case the jury found that CBI had intentionally withheld sales commissions of approximately \$135,000 from Henes. If this lawsuit had been brought under the Massachusetts act or the South Carolina act, Henes could have recovered commissions and penalties of as much as \$940,000. If the same lawsuit had been brought under the sales representative act in one of Michigan’s neighboring states, Ohio, Indiana, or Illinois, Henes could

²⁸These are Alabama, Arkansas, California, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Mississippi, New Hampshire, Ohio, Tennessee, and Texas.

²⁹These are Florida, Kansas, Minnesota, New York, North Carolina, and Pennsylvania.

have recovered as much as \$705,000 in commissions and penalties. In Michigan, however, the maximum potential recovery for Henes, including penalties and sales commissions, was only \$235,000. In fact, any claim involving more than \$100,000 in commissions will always result in a higher potential recovery in any of the states other than Michigan that allow for the recovery of penalty damages.

This cap on penalty damages is a further indication that the Legislature did not intend to include an element of bad faith as a prerequisite for an award of penalty damages under the SRCA. Although the penalty damages available under the SRCA should undoubtedly have a deterrent effect on principals planning to withhold commissions, the deterrent effect quickly diminishes as the amount of commissions in dispute increases over \$50,000. Under the acts in other states allowing for the recovery of penalty damages, there is no similar decline in the deterrent effect of the penalty damages available. Since the potential sting of the penalty damages available under the SRCA is substantially less than the potential sting of the penalty damages available under the acts in other states, it makes sense that the threshold for awarding penalty damages under the Michigan Act should be lower.

These two significant differences, i.e., a specific threshold of conduct identified by the Legislature and a fixed dollar cap on the maximum penalty damages, clearly set the SRCA apart from the sales representative acts in other states. Nevertheless, CBI attempts to rely upon a case decided under the Illinois Sales Representative Act, 820 ILCS 120/0.01-3, which differs substantially from the SRCA. The penalty provision of the Illinois act provides as follows:

Sec. 3. A principal who fails to comply with the provisions of Section 2 concerning timely payment or with any contractual provision concerning timely payment of commissions due upon the

termination of the contract with the sales representative, shall be liable in a civil action for exemplary damages in an amount which does not exceed 3 times the amount of the commissions owed to the sales representative. Additionally, such principal shall pay the sales representative's reasonable attorney's fees and court costs.³⁰

There are three major differences between the Illinois act and the SRCA. First, the SRCA specifically provides that its penalty damages will be available when a principal "intentionally" fails to pay commissions. The Illinois act does not specify the level to which a principal's conduct must rise before its penalty damages will be imposed. Second, the Illinois act specifically identifies its penalty damages as "exemplary damages", while the SRCA does not. Third, the SRCA caps its penalty damages at \$100,000, while the Illinois Act does not contain any cap on penalty damages.

In *Maier & Associates Inc v Quality Cabinets*, 640 NE2d 1000 (Ill App 1994), the case cited in CBI's brief, the Appellate Court of Illinois held that a sales representative could not recover exemplary damages under the Illinois act unless it proved: 1) that the principal violated the act by failing to pay commissions within the time limits set by the act, and 2) the principal's behavior "was outrageous and the moral equivalent of criminal conduct." *Maier, supra* at 1009. In reaching this conclusion, the *Maier* court relied upon its previous decision in *Zavell & Associates Inc v CCA Industries Inc*, 628 NE2d 1050 (Ill App 1993), in which the court applied Illinois common law concerning exemplary damages to find that penalty damages could not be awarded in the absence of "willful and wanton conduct or vexatious refusal to pay." *Zavell, supra* at 1052.

³⁰See Addendum 15.

Although the *Maier* and *Zavell* cases may be instructive regarding application of the Illinois act, their analysis should not be extended to the SRCA. In *Maier* and *Zavell* it made sense for the Illinois courts to resort to the common law governing exemplary damages because the Illinois act does not include any express language identifying the threshold of conduct that will give rise to penalty damages, and because the Illinois act expressly identifies its penalty damages as exemplary damages. There is no need for a court applying the SRCA to resort to the common law, however, because the Michigan Legislature included express language in the SRCA identifying the threshold of conduct that will give rise to penalty damages -- penalty damages will be available whenever a principal “intentionally” fails to pay commissions. Accordingly, the analysis of the *Maier* and *Zavell* cases should not be extended to the SRCA.

III. Cases Decided Under Other Michigan Statutes Are Not Instructive for the Same Reasons That Cases Decided under the Sales Commission Acts of Other States Are Not Instructive.

In addition to its argument based on the Illinois act, CBI also devotes a substantial portion of its brief to discussing a litany of Michigan cases, unrelated to the SRCA, that involve claims for punitive or exemplary damages in a wide array circumstances. When these cases are examined, however, it becomes evident that their reasoning should not be applied to the SRCA for the same reasons that the Illinois cases cited by CBI should not be applied.

CBI starts its analysis by quoting a passage from *Baumier v Antiau*, 65 Mich 31; 31 NW 888 (1887), a case in which this Court essentially found error in a jury instruction that allowed an award of punitive or exemplary damages based only upon the same facts necessary to find that a trespass had occurred. The *Baumier* case is inapplicable because there is nothing in the opinion

that indicates that it involved a question of statutory construction. The *Baumier* Court was not trying to determine whether the Legislature meant “intentionally” when it said “intentionally”. Rather, it appears that the *Baumier* Court was applying common law rules concerning punitive or exemplary damages to a common law claim of trespass.

Next, CBI discusses the case of *Peisner v Detroit Free Press*, 421 Mich 125; 364 NW2d 600 (1984). In the *Peisner* case, this Court was called upon to address the application of the exemplary and punitive damages provisions of Michigan’s libel statute, MCL 600.2911(2)(b), as it existed in 1984. At that time, the relevant statutory language was as follows:

(b) Exemplary and punitive damages shall not be recovered in actions for libel unless the plaintiff, before instituting his action, give notice to the defendant to publish a retraction and allows a reasonable time to do so, and proof of the publication or correction shall be admissible in evidence under a denial on the question of good faith of the defendant, and in mitigation and reduction of exemplary or punitive damages. The retraction shall be published in the same size type, in the same editions and as far as practicable, in substantially the same position as the original libel.

Peisner, supra at 130.

The differences between the libel statute and the SRCA are evident from this language. Unlike the SRCA, which expressly states that an “intentional” failure to pay will give rise to penalty damages, the language of the libel statute does not identify any particular level of conduct that will give rise to exemplary or punitive damages. Furthermore, while the SRCA does not include an express “good faith” exception from its penalty damages, the libel statute explicitly provides that good faith may be considered to mitigate or reduce exemplary or punitive damages. Given the substantial differences in the statutory language, it is clear that *Peisner* Court’s analysis of the libel statute should not be applied to the SRCA.

CBI also cites *Veselenak v Smith*, 414 Mich 567; 327 NW2d 261 (1982), a case in which this Court was asked to determine whether a plaintiff injured by a physician could recover exemplary damages for injury to feelings in addition to compensatory damages for pain and mental distress. In its analysis of the issue, the Court noted that exemplary damages are generally only available where the defendant's conduct was "malicious or so willful and wanton as to demonstrate reckless disregard of plaintiff's rights." *Id.* at 575.

The analysis of the *Veselenak* case, however, is not applicable to the SRCA. The *Veselenak* case involved a discussion of the common law principles governing exemplary damages, and did not involve an issue of statutory construction. In the SRCA, the Legislature has expressly stated that penalty damages will be available whenever a principal "intentionally" fails to pay commissions. Under the rules of statutory construction, this specific identification of a standard of conduct by the Legislature clearly trumps the common law principles governing exemplary damages. *Bradley v Board of Education*, 455 Mich 285, 301; 565 NW2d 650 (1997) ("[A]n applicable statute always surmounts a conflicting common-law rule."). Accordingly, the *Veselenak* case is not applicable here. (A similar analysis applies to *McPeak v McPeak*, 233 Mich App 483; 593 NW2d 180 (1999), cited in CBI's brief.)

Next, CBI cites a number of cases involving statutes that provide for awards of "liquidated damages", double damages, or treble damages. CBI begins with *Heath v Alma Plastics Co*, 121 Mich App 137; 328 NW2d 598 (1982), and *Saginaw Firefighters Ass'n v Saginaw*, 137 Mich App 625; 357 NW2d 908 (1984), two cases addressing the Minimum Wage Law, MCL 408.393. The Minimum Wage Law permits an employee to bring an action to recover not only the wages an employer has failed to pay in violation of the act, but also "an

equal additional amount as liquidated damages”. MCL 408.393(1)(a). In *Heath*, the Michigan Court of Appeals was called upon to determine whether the “liquidated damages” were discretionary or mandatory. Importantly, in its analysis of the issue the Court of Appeals first deferred to the Legislature:

In the instant case, the Legislature gave no indication as to whether the liquidated damages provision was mandatory or discretionary. *In the absence of a contrary intent*, it is our opinion that the liquidated damages are clearly punitive in nature and were intended to be imposed only in cases of wilful or flagrant violations.

Heath, supra at 144 (emphasis added).

The analysis of the *Heath* case further demonstrates that this Court should not read a “bad faith” requirement into the SRCA. In *Heath*, the Court read the “wilful or flagrant” language into the Minimum Wage Law only after it determined that the Legislature had not indicated a contrary intent. In the SRCA, the Legislature has clearly indicated that penalty damages will be available whenever a principal “intentionally” fails to pay commissions. Thus, there is no reason for the Court to read a standard of conduct into the SRCA.

Although there is some variation in the remaining cases and statutes cited by CBI, the analysis is essentially the same. None of the Michigan cases cited by CBI involve a situation where an appellate court ignored express statutory language and read a “bad faith” requirement into a statute providing for penalty damages. The cases cited by CBI primarily involve common law claims for exemplary damages, or statutes where the Legislature failed to include express language identifying the threshold of conduct giving rise to penalty damages. The SRCA is different from the cases and statutes because the Legislature has specifically prescribed the level

of conduct that will give rise to an award of penalty damages under the SRCA. According to the Michigan Legislature, penalty damages should be awarded under the SRCA whenever a principal “intentionally” fails to pay commissions.

IV. The Iowa Supreme Court Cases Cited by CBI Are Not Instructive Because the Iowa Supreme Court Did Not Apply the Rules of Statutory Construction That Are Typically Applied by Michigan Courts.

CBI also contends that this Court should follow the analysis applied by the Iowa Supreme Court with regard to the Iowa Wage Payment Collection Law, Iowa Code Ann. §§ 91A.1-13. Among other things, the Iowa Wage Payment Collection Law provides for “liquidated damages” when “it has been shown that an employer has intentionally failed to pay an employee wages or reimburse expenses”. Iowa Code Ann. §§ 91A.9. In the case of *Halverson v Lincoln Commodities Inc*, 297 NW2d 518 (Iowa 1980), the Iowa Supreme Court addressed the application of this provision in dictum. Rather than applying the rules of statutory and construction and examining the language of the statute, the Iowa Supreme Court indicated that if called upon to apply the liquidated damages provision, it would defer to the reasoning set forth in 48A Am Jur 2d, Labor and Labor Relations, § 2617. *Halverson, supra* at 523.

Later, in *Condon Auto Sales & Service Inc v Crick*, 604 NW2d 587, 598 (Iowa 1999), the Iowa Supreme Court, relying on *Halverson*, held that liquidated damages could be awarded against an employer that knew wages were due and failed to pay them. Just as with the *Halverson* decision, the *Condon Auto Sales* decision did not include any analysis under the rules of statutory construction.

The Iowa Supreme Court's failure to engage in any significant analysis under the rules of statutory construction precludes the application of the *Halverson* and *Condon Auto Sales* cases to this Court's analysis of the SRCA. As set forth above, this Court has repeatedly stated that the first step in statutory construction is to examine the language of the statute and attempt to discern the intent of the Legislature. *Lesner v Liquid Disposal, supra* at 101-102; *Helder v Sruba, supra* at 99. The Court is to give the language of a statute its ordinary and generally accepted meaning, and judicial construction is authorized only where the statute lends itself to more than one interpretation. *Helder, supra*. "[T]he role of the judiciary is not to articulate its view of 'policy,' but to apply the statute in accord with its plain language." *Id.* Nothing in the *Halverson* or *Condon Auto Sales* case indicates that the Iowa Supreme Court applied any of the rules of statutory construction. Rather, it appears that the Court simply adopted the approach set forth in *American Jurisprudence* with little or no analysis of the express language of the statute. Accordingly, the *Halverson* and *Condon Auto Sales* cases should be given little, if any, weight by this Court.

V. CBI's Arguments Based on the "Legislative History" of the SRCA Are Flawed.

Finally, CBI has raised a number of arguments based upon its interpretation of the "legislative history" of the SRCA. CBI's arguments are based in large part upon the Senate Fiscal Agency Bill Analyses and the House Legislative Analysis Section Bill Analyses prepared while the SRCA worked its way through the Legislature. As this Court noted in *Frank W Lynch & Co v Flex Technologies Inc, supra* at 587, reliance upon bill analyses is "a perilous venture . . . doubly fraught with danger in Michigan" As the Court noted:

The problem with relying on bill analyses is that they do not necessarily represent the views of even a single legislator. . . . Indeed, the analyses themselves note that they do not constitute an official statement of legislative intent.

Id.

Notwithstanding this Court's opinion in *Lynch*, however, CBI continues to insist that the bill analyses relating to the SRCA evince a legislative intent that the Act's penalty damages would only be awarded in cases where bad faith is demonstrated. An examination of the analyses, however, reveals absolutely no discussion of a "bad faith" requirement, or even a "good faith" exception to the SRCA. As Judge Rosen noted in the trial court,

Nonetheless, even accepting the SFA Bill Analysis as an expression of legislature's intent, nothing in that document supports Defendant's argument that the Legislature intended that some element of "bad faith" would be required for the awarding of intentional-failure-to-pay double commissions. All that the Analysis states is that the double damages provision "should," in the event of noncompliance with the 45 day time limit for paying sales commissions to which representatives are entitled, "deter recalcitrant principals from failing to pay earned commissions."

(Opinion and Order, pp. 21-22, Apx. 229A-230A).

CBI also attempts to rely on Governor Engler's veto letter dated July 15, 1991. The primary problem with this argument is that it focuses on the Governor's motivation for vetoing an earlier proposed statute, and not on the Legislature's intent when enacting the SRCA. In the veto letter, Governor Engler states the following as one of his reasons for the vetoing Senate Bill 36:

Second, I oppose the use of exemplary damages in contract actions absent broad public policy considerations and particularly in this case where exemplary damages would be assessed without

consideration of the underlying factors resulting in breach of contract.

See 7/15/91 Veto Letter, (Copy attached as Addendum 16). CBI makes the wholly unsupported claim that this language indicates the Governor wanted a higher threshold of conduct for penalty damages, and that the Legislature responded by adding the “intentionally” standard to the SRCA “to impose a high scienter threshold” for penalty damages. To accept this argument, the Court would have to assume that the Legislature really meant “intentionally and in bad faith” when it used the word “intentionally”. Nothing in the “legislative history” of the SRCA indicates that this was case.

On the other hand, there is an equally plausible explanation that supports Henes’ position. The Governor’s veto letter can be read as an objection to the Legislature’s failure to specifically identify the threshold of conduct that would give rise to penalty damages. In other words, the Governor may have vetoed the bill because he wanted the threshold of conduct to be more specifically identified, not because he wanted it increased. In response to the veto, the Legislature added the word “intentionally”. By adding the word “intentionally”, the Legislature more specifically identified the threshold of conduct that would give rise to penalty damages, fully addressing the Governor’s concerns. Under this scenario, there is no need for the Court to assume that the Legislature said one thing when it meant another.

In any event, CBI’s arguments based on “legislative history” must fail. The House and Senate bill analyses relied upon by CBI are feeble indicators of legislative intent, and they do not include any express language indicating a legislative intent to include a “bad faith” requirement in the SRCA. CBI’s arguments concerning the Governor’s veto of Senate Bill 36 are based on

pure speculation. Nothing in the Governor's letter or the express language subsequently enacted by the Legislature indicates an intent to include a "bad faith" requirement in the SRCA.

Accordingly, the Court should not read a "bad faith" requirement into the Act.

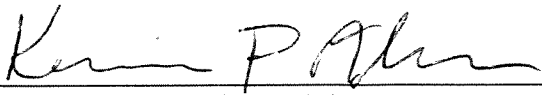
CONCLUSION AND RELIEF REQUESTED

When the Michigan Sales Representatives Commission Act is analyzed in the context of Michigan law governing statutory construction, it becomes apparent that the Michigan Legislature has already specifically identified the level to which a principal's conduct must rise before penalty damages will be available. The Michigan Legislature expressly provided in the SRCA that penalty damages will be available whenever a principal "intentionally" fails to pay commissions. Nothing in the express language of the Act or the definition of "intentionally" indicates that penalty damages should only be available when a principal acts in "bad faith", or that a principal should be exempt from penalty damages if it withholds commissions in "good faith". The Legislature said "intentionally", and the Legislature is presumed to mean what it says.

Since the Legislature has specifically identified the standard of conduct giving rise to penalty damages, there is no reason for courts to look to the common law or to the law of other states for an additional standard of conduct to be added to the SRCA. Accordingly, Henes requests this Court to rule that the SRCA should be applied as it is written, and that sales representatives are permitted to recover penalty damages under the SRCA whenever a principal "intentionally" fails to pay commissions.

Respectfully submitted,

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Date: July 23, 2002

ADDENDUM 1 - MCL 600.2961

MICHIGAN COMPILED LAWS ANNOTATED
CHAPTER 600. REVISED JUDICATURE ACT OF 1961
REVISED JUDICATURE ACT OF 1961
CHAPTER 29. PROVISIONS CONCERNING SPECIFIC ACTIONS

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Current through P.A. 2001, No. 114
of the 2001 Regular Session, 91st Legislature

600.2961. Definitions; commission, determination of time due; liability of principal; cause of action under this section, costs, jurisdiction; waiver of rights void; effect of section

Sec. 2961. (1) As used in this section:

(a) "Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the amount of orders or sales or as a percentage of the dollar amount of profits.

(b) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(c) "Prevailing party" means a party who wins on all the allegations of the complaint or on all of the responses to the complaint.

(d) "Principal" means a person that does either of the following:

(i) Manufactures, produces, imports, sells, or distributes a product in this state.

(ii) Contracts with a sales representative to solicit orders for or sell a product in this state.

(e) "Sales representative" means a person who contracts with or is employed by a principal for the solicitation of orders or sale of goods and is paid, in whole or in part, by commission. Sales representative does not include a person who places an order or sale for a product on his or her own account for resale by that sales representative.

(2) The terms of the contract between the principal and sales representative shall determine when a commission becomes due.

(3) If the time when the commission is due cannot be determined by a contract between the principal and sales representative, the past practices between the parties shall control or, if there are no past practices, the custom and usage prevalent in this state for the business that is the subject of the relationship between the parties.

(4) All commissions that are due at the time of termination of a contract between a sales representative and principal shall be paid within 45 days after the date of termination. Commissions that become due after the termination date shall be paid within 45 days after the date on which the commission became due.

(5) A principal who fails to comply with this section is liable to the sales representative for both of the following:

(a) Actual damages caused by the failure to pay the commissions when due.

(b) If the principal is found to have intentionally failed to pay the commission when due, an amount equal to 2 times the amount of commissions due but not paid as required by this section or \$100,000.00, whichever is less.

(6) If a sales representative brings a cause of action pursuant to this section, the court shall award to the prevailing party reasonable attorney fees and court costs.

(7) In an action brought under this section, jurisdiction shall be determined in accordance with chapter 7. [FN1]

(8) A provision in a contract between a principal and a sales representative purporting to waive any right under this section is void.

(9) This section does not affect the rights of a principal or sales representative that are otherwise provided by law.

CREDIT(S)

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P.A.1961, No. 236, § 2961, added by P.A.1992, No. 125, § 1, Imd. Eff. June 29, 1992.

[FN1] Section 600.701 et seq.

M. C. L. A. 600.2961

MI ST 600.2961

END OF DOCUMENT

ADDENDUM 2 - *Webster's New World Dictionary* (3d College ed. 1988)
Definition of "Intentional"

THIRD COLLEGE EDITION

Webster's New WorldTM Dictionary

OF AMERICAN ENGLISH

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Editor in Chief Emeritus



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to David B. Guralnik
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